TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. age of

THE MICHIGAN LAND AND LUMBER COMPANY. LIMITED, PLAINTIFF IN ERROR.

V8.

CHARLES A. RUST, SURVIVOR, &c.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH-CIRCUIT.

FILED AUGUST 28, 1895.

(16,010.)





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Writ of error



united States Circuit Court of Appeals for the Sixth Circuit, October Term, 1893.

Michigan Land and Lumber Company, Limited, Plaintiff in Error, No. 178.

CHARLES A. RUST, Survivor, etc., Defendant in Error.

In error to the circuit court of the United States for the eastern district of Michigan.

Record.

Filed January 20, 1894. Walter S. Harsha, clerk.

J. W. Champlin, Frank E. Robson, attorneys for plaintiff in error. Hanchett, Stark & Hanchett, attorneys for defendant in error.

No. 178.

CHRONOLOGY.

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CALENDAR ENTRIES.

THE MICHIGAN LAND AND LUMBER COMPANY (LIMITED) AMASA RUST and CHARLES RUST.

1888.

Feb. 11. Declaration filed, rule to plead entered.

22. Præcipe for appearance of defendants filed.

22. Appearance of defendants entered.

22. Plea filed.

1892.

Mar. 29. Consent to substitution of John W. Champlin as attorney for plaintiffs 29. Order of substitution entered.

29. Consent to substitution of Frank E. Robson as attorney for plaintiff filed. Order of substitution entered.

May 19. Note of issue, June term, 1892, filed by defendants' attorneys.

29. Leave granted to amend declaration so as to claim one-half interest,

instead of whole of lands therein described.

29. Jury trial continued.

30. Trial concluded. Verdict for defendant- under instructions of court.

30. Time to settle bill of exceptions extended until second day of ensuing March term.

30. Plaintiff's requests to charge filed.

1893.

Feb. 43. Defendants' bill of costs taxed at \$64.60 and filed.

Mar. 7. Time to settle bill of exceptions extended thirty days. April 3. Time to settle bill of exceptions extended thirty days. May 8. Time to settle bill of exceptions extended thirty days.

9. Affidavit of death of defendant Amasa Rust filed.

9. Order suggesting death of Amasa Rust, and that cause proceed against remaining defendant.

June 6. Time to settle bill of exceptions extended sixty days.

Judgment for defendant entered.

5. Time to settle bill of exceptions extended thirty days. Bill of exceptions filed.

1894.

Jan. 12. Assignment of errors filed.

12. Petition for writ of error, with allowance thereof, filed. 12. Writ of error issued.

12. Bond on writ of error filed.

Citation issued.

Writ of error returned, service accepted.

Citation returned, service accepted.

The Circuit Court of the United States for the Eastern District of Michigan.

Declaration

STATE OF MICHIGAN, 88:

The Michigan Land and Lumber Company (Limited), organized under the laws of Michigan, plaintiff herein, by A. McDonell, its attorney, comes and files this declaration as commencement of suit, and complains of Amasa Rust and Charles Rust, who are inhabitants of said district, defendants in this suit. For that whereas, the said plaintiff, heretofore, to wit, on the first day of February, A. D. 1888, was possessed of certain real estate and premises, with the appurtenances, situate in the county of Clare, in said district, and State of Michigan, known and described as follows, that is to say: S E $\frac{1}{4}$ of S E 4, section 20, town 18 N, range 3 W; N W 4 of S W 4, section 21, town 18 N, range 3 W; N W 1 of S E 1, section 22, town 18 N, range 3 W; N W 4 of N W 4, section 28, town 18 N, range 3 W; N W $\frac{1}{4}$ of N W $\frac{1}{4}$, section 29, town 18 N, range 3 W; N $\frac{1}{2}$ of S W $\frac{1}{4}$, section 29, town 18 N, range 3 W; N ½ of N E ¼, section 35, town 18 N, range 3 W; E ½ of S W ¼, section 1, town 18 N, range 4 W; of the value of five thousand dollars and upwards, and which said premises the said plaintiff claims in fee, and the said plaintiff being so possessed thereof, the said defendants, afterwards, to wit, on the second day of February, A. D. 1888, entered into the said premises and ejected the said plaintiff therefrom, and unlawfully withholds from the said plaintiff the possession thereof, to the damage of said plaintiff five thousand dollars. And the said plaintiff avers that the matter in dispute in this cause exceeds, exclusive of interest and costs, the sum or value of two thousand dollars,

and that the said matter in dispute arises under the laws of the United States, viz., the acts of Congress under which the parties hereto respectively claim title to said lands; hence this suit.

A. McDONELL, Attorney for Plaintiff.

Plea.

STATE OF MICHIGAN, 88:

The Circuit Court of the United States for the Eastern District of Michigan.

Amasa Rust and Charles Rust

THE MICHIGAN LAND AND LUMBER COMPANY (LIMITED), Organized under the Laws of Michigan.

The defendants, Amasa Rust and Charles Rust, by Hanchett, Stark & Hanchett, their attorneys, come and demand a trial of the matters set forth in the plaintiff's declaration.

HANCHETT, STARK & HANCHETT, Attorneys for Defendants.

Verdict.

MICHAEL AND LUMBER CO., LIMITED, VS.

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court-room, in the city of Detroit, on Wednesday, the thirtieth day of November, in the year one thousand eight hundred and ninety-two.

Present: The Honorable Henry H. Swan, district judge.

In this cause the jurors heretofore impanelled and sworn come into court again and sit together, and after hearing the arguments of counsel, under the instructions of the court, without leaving their seats, say upon their oaths that the said defendant is not guilty of unlawfully withholding the premises in the said plaintiff's declaration in this cause mentioned and described in manner and form as the said plaintiff in its said declaration complained against it.

Order Reviving Sait Against Charles Rust.

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court-room, in the city of Detroit, on Tuesday, the ninth day of May, in the year one thousand eight hundred and ninety-three.

Present: The Honorable Henry H. Swan, district judge.

THE MICHIGAN LAND AND LUMBER COMPANY (LIMITED) vs.

Amasa Rust and Charles Rust.

The above-named Amasa Rust having departed this life after verdict and before judgment in the above action of ejectment, the death of said Amasa Rust is hereby suggested upon the record; and on motion of J. W. Champlin, attorney for plaintiff, ordered that said suit be prosecuted against Charles Rust as survivor and sole defendant.

6 Judgment.

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court-room, in the city of Detroit, on Thursday, the third day of August, in the year one thousand eight hundred and ninety-three.

Present: The Honorable Henry H. Swan, district judge.

15 THE MICHIGAN LAND AND LUMBER COMPANY (LIMITED)

CHARLES RUST, Surviving Defendant.

The jury by whom the issue in this cause was tried having rendered a verdict in favor of said defendant, now, on motion of Mr. Gilbert Stark, of counsel for defendant, it is by the court now here considered, that said plaintiff take nothing by its suit, and that said defendant do go thereof without day. It is further considered that said defendant do recover against said plaintiff his costs and charges by him about his defense in this behalf expended to be taxed, and that said defendant have execution therefor.

Bill of Exceptions.

UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit, Eastern District of Michigan.

MICHIGAN LAND AND LUMBER COMPANY (LIMITED), Plaintiff,) CHARLES RUST, Surviving Defendant.

At a session of said court, held at the court room, in the city of Detroit, in said eastern district of Michigan, on the 28th day of November, A. D. 1892, before the Honorable Henry H. Swan, district judge, the issue joined between the parties came on to be tried by a jury of the said eastern district of Michigan, good and lawful men, for that purpose duly impaneled, tried and sworn, at which day there came the plaintiff, as well as said defendants, and their respective attorneys, and thereupon the said parties proceeded to the trial of said issue.

And upon the trial thereof, the plaintiff's counsel, to maintain and prove the issue upon its part, after reading the description of lands given in the declaration, and stating that it appeared that defendants had no interest in the following parcels, viz., N W 1 of N W 4 of section 29, 18 N, 3 W, asked leave to amend the declaration by striking out this description, which motion was granted, and so ordered.

And plaintiff's counsel further moved for leave to amend the declaration herein so as to claim but an undivided one-half in fee of descriptions remaining in said declaration, which motion was granted, and so ordered. 8

And then offered and read in evidence the following stipulation, in writing, between the parties, marked

Ехнівіт 1.

It is hereby stipulated between the parties hereto, by their respective attorneys, certified copies of all lists of lands known as surveyor generals' lists, approved lists, lists of railroad lands, all

patents from the United States Government to the State of Michigan, and all other lists and documents covering numerous descriptions of land, such lists, pater ts and documents being a part of the records of any public office, may omit the descriptions of land in whole or in part, and shall not be objectionable as evidence because not containing all the descriptions in such lists, patents or documents. The certificate of the proper officer that such copy is a true copy of such lists, patents or documents, so far as they respectively relate to the descriptions given in such copy, shall be received with the same force and effect as though the copy were a complete copy of all descriptions actually contained in the original lists, patents or documents.

And it is further stipulated that a certificate made in conformity with section 7505 of the 2d volume of Howell's Annotated Statutes of the State of Michigan, shall be receivable in evidence with the same force and effect as the same would be receivable in the courts of the State of Michigan, and that a certificate from the same officer that any given descriptions of land are not contained in any specified lists, documents or patents in his office, shall likewise be presumptive evidence of the facts so certified.

It is further stipulated that plaintiff is a partnership association organized under chapter 79, Howell's Annotated Statutes and

Amendments.

And then read from the report of the Commissioner of 1) the General Land Office for the year 1850, p. 16, as

Ехнівіт 2.

"Under the act passed by Congress on the 28th September, 1850, 'to enable the State of Arkansas and other States to reclaim the swamp lands within their timits,' it was decided, with your approbation, to charge the surveyors general of the several States in which their offices existed, in the first place, with making out lists of the lands granted to those States by that law, and, where those offices were abolished, to devolve that duty on the land officers of the respective districts.

"Full instructions have been made out and transmitted for this purpose, and by those instructions the act of Congress will be carried out, the right to all the swamp and overflowed lands unfit for cultivation secured to the States, and the interests of the Govern-

ment protected."

Plaintiff's counsel then read

Ехнівіт 3.

GENERAL LAND OFFICE, November 21, 1850.

Six: I have the honor to inclose you a copy of the instructions this day sent to the surveyor general of your State for the selection of the swamp and overflowed lands to which the State will be entitled by the act of 28th September, 1850.

You will perceive that by those instructions the surveyor general is authorized to receive such reliable evidence of the character of any of these lands, as may be presented by the authorities of the

State; and, as many of the lands are probably surveyed at dry seasons, and hence are not represented by the descrip-

10 tive notes or plats as being of that character, I have supposed that it may be a matter of sufficient importance to induce you to call upon the county surveyors, or other respectable persons of your State, for a statement under oath of the swamp or overflowed lands in their respective counties. Such testimony, you will perceive, will be regarded as establishing the facts in the case, and, on receipt of the reports of the surveyor general, lists of the land will be prepared as required by the act submitted for the approval of the Secretary of the Interior, and plats and patents for the lands thus approved will at once be prepared and forwarded to you.

With great respect, your ob't serv't,

J. BUTTERFIELD,

Commissioner.

His excellency the governor of Michigan, Lansing, Mich.

The instructions contained in the foregoing are as follows:

Ехнівіт 3 А.

(Copy.)

General Land Office, November 21st, 1850.

SIR: By the act of Congress entitled "An act to enable the State of Arkansas and other States to reclaim the 'swamp lands' within their limits," approved September 28, 1850, it is directed "That to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands made thereby unfit for cultivation, which shall remain unsold at the passage of this act, shall be, and the same are hereby granted to said State."

1st. By the 4th section of this act, it is directed that the provisions of it "shall be extended to, and their benefits be conferred upon each of the other States of the Union in which such swamp

and overflowed lands may be situated."

11 2d. And "that in making out a list and plats of the lands aforesaid, all legal subdivisions, the greater part of which is wet and unfit for cultivation,' shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom."

This act clearly and unequivocally grants to the several States those lands which, from being swampy or subject to overflow, are unfit for cultivation; in this class is included also all lands which, though dry part of the year, are subject to inundation at the planting, growing or harvesting season, so as to destroy the crop, and 3 - 331

THE MICHIGAN LAND AND LUMBER CO., LIMITED, VS.

therefore are unfit for cultivation, taking the average of the seasons, for a reasonable number of years, as the rule of determination.

You will please make out a list of all the lands thus granted to the State, designating those which have been sold or otherwise disposed of since the passage of the law, and the price paid for them

when purchased.

The only reliable data in your possession from which these lists can be made out, are the field-notes of the surveys on file in your office; and if the authorities of the State are willing to adopt these as a basis of those lists, you will so regard them. If not, and these authorities furnish you satisfactory evidence that any lands are of the character embraced by the grant, you will so report them. The following general principles will govern you in making up those lists, to wit:

Where the field-notes are the basis and the intersections of the lines of swamp or overflow with those of the public surveys alone are given, those intersections may be connected by straight lines, and all legal subdivisions, the greater part of which are shown by these lines to be within the swamp or overflow, will be certified to the State; the balance will remain the property of the Government.

Where the State authorities may conclude to have the surveys made to determine the boundaries of the swamp or over-flowed lands, those boundaries alone should be surveyed, taking connections with the nearest section or township cor-

ners; or,

Where the swamp or overflowed lands are on the borders of a stream or lake, the stream or lake could be meandered, and ordinates surveyed at suitable intervals from the borders of the stream or lake to the margin of the swamp or overflowed lands, and by connecting the ends of those ordinates next to that margin by straight lines, the boundaries of the swamp or overflowed lands can be ascertained with sufficient accuracy. In no case, however, should any such boundaries or ordinates be marked in the field, as they may produce difficulty in determining the lines and corners of the public surveys hereafter, and thus lead to litigation. The selections in all these cases will be made as before directed. Where satisfactory evidence is produced that the whole of a township, or of any particular and specified part of a township, or the whole of a tract of country bounded by specified surveyed or natural boundaries, is of the character embraced by the grant, you will so report it. adjacent subdivisions, however, to be subject to the regulations above given; and in every case under each rule or principle herein prescribed, forty-acre lots or quarter quarter-section will be regarded as the legal subdivisions contemplated by the law.

The affidavits of the county surveyors and other respectable persons that may understand and have examined the lines, and that the lands bounded by lines thus examined and particularly designated in the affidavit are of the character embraced by the law,

should be sufficient,

The line or boundary of the overflow that renders the land unfit for regular cultivation may be adopted as that which regulates the

grant. You will make out lists of these lands as early as practicable, according to the following form, one copy of which you will transmit to the land officers and another to this office. The lands selected should be reserved from sale, and after those selections are

approved by the Secretary of the Interior, the register should enter all the lands so selected in his tract books as "granted to the State by act 28th September, 1850, being swamp or overflowed land." And on the plats enter on each tract. "State act 28th September, 1850." Copies of the approved lists will be sent to the registers for this purpose. Your early attention is required in this matter, that the grant may be disposed of as speedily as possible.

Very respectfully, your ob't serv't,

J. BUTTERFIELD.

Commissioner.

Counsel then read

Ехнівіт 4.

SURVEYOR GENERAL'S OFFICE. Detroit, December 6, 1850.

His excellency John S. Barry.

SIR: I have the honor herewith to inclose to you a copy of instructions to me to designate the swamp lands granted to the State of Michigan by the act of Congress approved September 28, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the 'swamp lands'" within their limits. To enable me to carry out the views of the Government in making this grant, I have to request of you information:

1st. Whether the State authorities are willing to adopt the fieldnotes of the surveys on file in this office as the basis of the lists of

all lands thus granted to the State, or

2d. Whether the State authorities conclude to have the surveys made to determine the boundaries of the swamp or overflowed

With great respect, I am your ob't s'v't,

CHARLES NOBLE.

Sur. General.

(This letter contained a copy of the same instructions heretofore read as Exhibit 3 A.)

14 And then read

EXHIBIT 5.

Executive Office, Lansing, December 20, 1850.

Sig: I have the pleasure to acknowledge the receipt of your letter of the 6th inst. Absence has prevented an earlier reply.

I am inclined to believe that a further survey would give the State a far greater amount of swamp lands than are designated as such in the records of your office; but, having no authority, I hardly feel at liberty to incur the expense that would attend such survey.

subject.

If all actions could be delayed until the meeting of the legislature, to which the matter could be submitted, I can hardly doubt that provision would be made for securing to the State all the benefits to be derived from the act of Congress in question.

I have the honor to be y'r ob't serv't.

Thave the honor to be y i or

JOHN S. BARRY.

Chas. Noble, sur. gen'l, Detroit.

And the answer thereto:

Ехнівіт 6.

(Private.)

SUR. GENERAL'S OFFICE, DETROIT, Jan'y 3, 1851.

His excellency John S. Barry.

DEAR SIR: I have received your letter of the 20th ult. I am persuaded from the examination of the notes returned to this office that the amount of "swamp land," designated as such on the notes, taking all the unsold lands together, must be greater than would now be found from an actual resurvey of the whole; and I think there could be no doubt whatever that the net proceeds to the State

would be much greater. The expense to the State of a resurvey of the whole peninsulas (upper and lower) (for I do 15 not see how it could properly be ascertained short of a full survey of the whole) would be very large; and probably equal in amount the value of the lands designated by the act of Congress in question. The delay, too, necessarily attending the resurvey would be very great, and if no great advantages are to result therefrom, the benefit to be derived from act must be materially lessened. From the examinations already made of the notes of the surveyors returned to the sur. gen. office, I do not hesitate to say that in my judgment the true interest of the State will be much better promoted by making the designation of the "swamp lands" from the I beg pardon for thus obtruding my opinion upon your consideration, but I know you will appreciate my views and motives in so doing. I may add, perhaps, with great propriety, that the views of the late sur. gen. on this subject are the same as my own, as I have learned from a conversation with him upon the

I am with great respect your ob't serv't,

CHARLES NOBLE.

Since closing this letter, your favor of the 1st inst. has been rec'd. I cannot find in the law of Congress, or in the instructions to me from the Gen. Land Office, any authority for designating a portion of the "swamp lands" from the notes of the surveyors returned to this office, and a portion by a resurvey. My construction of the instructions were that the whole were to be designated either in the one way or the other. These lands are to be designated, all of them, from the notes of survey in this office unless the State authorities

choose to survey. It will take some weeks to go through with the examinations of the notes and maps, and my report will not probably be made before the middle of February, and probably not until the 1st of March.

CHARLES NOBLE.

Plaintiff's counsel then read in evidence an extract from the message of the governor of Michigan to the legislature of 1851, found on pages 24 and 25 of the Joint Documents of 16 Michigan for 1851, as follows:

EXHIBIT 7.

"By an act of Congress, passed at its last session, all unsold swamp and overflowed lands, thereby made unfit for cultivation, were granted to the State, upon the condition that the proceeds of their sale should be applied, as far as necessary, to the purpose of reclaiming them by means of levees and drains. tion deemed reliable, the State contains of this description of lands From informayet unsold about four millions of acres. How far this grant may be found beneficial to the State, after discharging the trust imposed, cannot now be determined. I doubt not, however, that the reclamation of the lands may be effected by a judicious system of drainage at an expense much less than their market value, and thus secure considerable revenue to the State. The result will, however, much depend upon the course now or hereafter adopted by the legisla-The wasteful expenditure of a previous similar grant should admonish us to husband this resource with economy.

"While it will not be advisable, nor under the constitution permitted, to relax our exertion to pay the public debt, it will be a great relief to bring in aid of that object this and other like resources that may come within our control. The most appropriate method of proceeding with the trust imposed may, perhaps, be left to a commission to be by you established, under such directions, restrictions and limitations as shall, on examination, be deemed ad-

"Some additional lands, of the description named, might probably be secured, besides those designated in the original surveys, should the legislature deem it expedient to provide for the expense of employing county surveyors or others to ascertain, by actual

examinations, their location, and report the same to the sur-17 veyor general. This privilege has been extended to the State, and the legislature is best competent to determine whether the additional lands thus to be secured would more than compensate the outlay required."

Plaintiff's counsel then read

EXHIBIT 8.

Surveyor General's Office, Detroit, Dec. 4, 1850.

SIR: I have received your communication of the 21st ult., relative to the swamp or overflowed lands granted to this State by the

act of Congress, approved 28th September last.

A statement of those lands will be made out in accordance with the instructions embraced in the communication above referred to, as soon as practicable. Before preparing such a statement, however, it will be necessary to obtain, from some source, a list of all the sold or unsold lands in each land district in this State, as there is no means in this office of ascertaining those facts.

Your instructions in regard to this matter are requested. Shall the registers be requested to furnish such lists, or will they be fur-

nished by the department at Washington. Very respectfully, your ob't serv't,

CHARLES NOBLE.

Surveyor General.

J. Butterfield, Esq., Commissioner.

And the answer thereto:

EXHIBIT 9.

GENERAL LAND OFFICE, Dec. 12th, 1850.

Charles Noble, sur. gen'l, Detroit, Mich.

SIR: Your communication of the 4th inst. has been received, relative to the selection of swamp and overflowed lands granted to the State of Michigan by the act of 28th Septem-18 ber, 1850, and suggesting the necessity of obtaining a list of

all the sold or unsold lands in each district, as a preliminary to making up the statement of the particular lands granted to the

State by the law.

In answer, I would suggest that the making up of lists of all the lands sold or otherwise disposed of, would devolve a great amount of labor on the land officers, most of which may be avoided by preparing statements for each district of all the lands in each, of the character embraced by the law, leaving a wide column for remarks. These lists can be sent to the land officers, with instructions to desiguate, in the column of "remarks," each tract that has been sold or disposed of, giving the date and manner of disposal of those taken up since the 28th September, 1850, and when sold, the price paid for them. These lists, with the annotations of the land officers, should then be transmitted to this office, that they may be compared with the tract books here, and clear lists made out of the lands falling to the State under the law.

Very respectfully, your ob't serv't,

J. BUTTERFIELD. Commissioner. And then read

EXHIBIT 10.

Surveyor General's Office, Detroit, June 18, 1851.

Sir: By your instructions dated 21st November, 1850, relative to the grant of swamp lands by the Government to this State, it is required in making out the lists of such lands at this office that "the intersections of the lines of swamp or overflow with those of the public surveys be connected by straight lines," "and all legal subdivisions, the greater part of which are shown by these lines to be within the swamp or overflow will be certified to the State, the

balance will remain the property of the Government."

The field-notes are made the basis from which these lists 19 are to be made out, but it is inferred that the plats, which are supposed to be a true delineation of the field-notes, are to be taken as such, and the connections of the swamps and overflow made upon them, thereby designating the lands which are to be included in the grant.

The original plats in this office were formerly made by the deputy surveyor generally in a hurried manner, and they are therefore not entirely reliable for accuracy. A large portion of the plats on file in this office are of this character, and it has been found necessary to compare them with the field-notes before proceeding with the This labor has been performed, but there still remains a difficulty which will be readily seen by reference to the inclosed dia-The connections of the lines of swamps can be made without difficulty where swamps are noted on two sides of a section, but, where it is otherwise, there is no rule for determining the extent or bounds of the swamp lands.

I would most respectfully ask your instructions relative to this subject, so that in making up the lists in accordance with your instructions referred to, of the 21st November last, some fixed and uniform rule may determine all cases of difficulty as to the extent

and boundary of the swamp lands.

The annexed diagram is made to show the method of connecting the swamp by straight lines from one intersection to another, exhibiting also the impossibility of connecting isolated swamps and wet and swampy lands, the boundaries of which are not defined in the field-notes.

Please return this diagram with any corrections and instructions

which may be required.

Very respectfully, your ob't servant,

CHARLES NOBLE.

Surveyor General.

J. Butterfield, Esq., Comm'r.

20

The diagram referred to in the foregoing letter is as follows:

Ехнівіт 10 А.

(Map opposite.)

(Here follows diagram marked page 20a.)

And then read

Ехнівіт 11.

SURVEYOR GENERAL'S OFFICE, DETROIT, March 31, 1852.

SIR: I transmit herewith a list of swamp lands in the Kalamazoo and Grand River land districts, which have been made up in accordance with your instructions of 21st November, 1850. These lists were transmitted to the registers of the respective districts in accordance with your instructions of Dec. 12, 1850, and have been returned with the annotations of the registers.

I also transmit herewith two abstracts showing the lands which have been sold in the above-named districts since the 28th Sept., 1850, up to the date of the certificates of the registers; also lists of lots that have been subdivided, necessarily, upon the original plats

in this office.

It will be observed that many of the lands which are denominated "swamp lands," in the list of the Kalamazoo district, have been sold. As this is in the most settled part of the State, where a great portion of all the lands have been sold, it is not surprising that such is the case, particularly as it has been ascertained that the deputies, or some of them at least, in the early surveys in this State, did not make the distinction which is now observed between marshes and prairies, and it was quite impossible to determine by the field-notes what were really swamp or marshes, and what were prairies, not intended to be included in the grant.

Lists of the "swamp lands" in the Detroit and Saginaw 21 land districts have been made, and they are now in the hands of the registers, from whom returns are expected

daily.

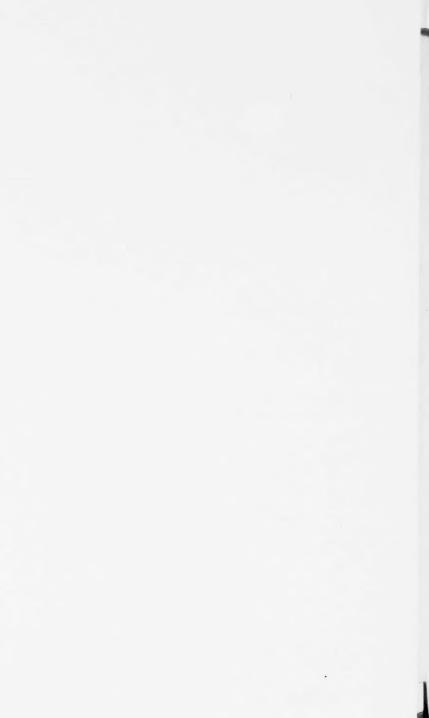
The list for the Lake Superior district has been completed so far as the surveys have been made, and it will be forwarded to the register by the first mail which leaves for Sault St. Marie.

I am, sir, very respectfully, your ob't serv't,

CHARLES NOBLE, Surveyor General.

J. Butterfield, Esq., Commissioner.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FIL



And the answer thereto.

Ехнівіт 12.

GENERAL LAND OFFICE, April 13th, 1852.

Charles Noble, Esq., surveyor general, Detroit, Michigan.

SIR: Yours of the 31st ultimo, accompanied with lists of the swamp and overflowed lands in the Kalamazoo and Grand River districts, selected by you under instructions from this office, dated November 21st, 1850, has been received. The lists appear to be in due form, but the certificates of approval attached thereto appear somewhat vague and uncertain, and the latter part of your letter is calculated to throw still more doubt upon the character of the selections on account of the great uncertainty of the notations made upon the field-notes on file in your office, or at least upon some of This office has no means of knowing how far these uncertain remarks upon the field-notes extend, or how much of the land embraced in these lists is in this condition. I have therefore to request that you will make out and transmit to this office more definite certificates of approval to be attached to these lists, provided, that with all the knowledge in your possession you can consistently do so. If not, you will make out an additional list of all

the tracts relative to which you entertain any doubts, and request the State authorities to furnish you with evidence of 22

the character of these lands, to enable you to approve and report all that are now in doubt, or to reject the same, as the evidence adduced may warrant you to do. As soon as this is done, you will report all the tracts approved upon the evidence adduced by the State authorities and those rejected upon that evidence, together with a certificate of approval of the remaining tracts embraced in the lists now in this office, and about which there is no question of doubt. I would suggest that to accomplish this object it may become necessary to require personal examinations to be made in many instances; but whatever reasonable evidence that will warrant you to certify and approve the lists as including lands embraced in the act making the grant will be sufficient. By suggesting to the State authorities that the field-notes in your office in many instances are too indefinite and uncertain for you to perfect the lists without further evidence, they will no doubt at once take the necessary steps to procure such evidence. If, however, they should decline to do so, you will, as before directed, make out a list of these doubtful tracts and transmit the same, with your approval of the remaining tracts, to this office without unnecessary delay.

In reporting lists of these lands in the future, you will leave out all the tracts that were sold or otherwise disposed of prior to the 28th day of September, 1850, the date of the act making the grant, as the tracts otherwise disposed of are only an additional incumbrance to the already heavy lists. The tracts sold and disposed of since that date, you will report as heretofore.

Very respectfully, your ob't serv't,

J. BUTTERFIELD, Commissioner. 20

Plaintiff then offered in evidence a letter from surveyor general to Commissioner of Land Office, dated May 12th, 1858, transmitting supplemental list No. 3, Grand River, which was received and marked "Exhibit 13," and a letter dated May 20th, 1858,

23 acknowledging receipt of above list, which was received and marked "Exhibit 14," which exhibits were afterwards withdrawn as hereinafter appears.

Plaintiff's counsel then read

Ехнівіт 15.

GENERAL LAND OFFICE, January 13th, 1854.

His excellency Andrew Parsons, governor of Michigan, Lansing, Mich.

SIR: I have the honor to transmit herewith a certified copy of list No. 1 of swamp and overflowed lands, selected as enuring to the State of Michigan, under the provisions of the act of Congress approved September 28, 1850, in the district of lands subject to sale at Ionia. Mich., taken from the original on file in this office, which, on the 27th day of October, 1853, was approved by the Secretary of the Interior.

The plat or diagram by which said list should be accompanied has not yet been completed. As soon as finished it will be trans-

mitted to your address.

You will be pleased to acknowledge the receipt of said list, and transmit to this office your request for the patents to issue, upon the receipt of which, or as soon thereafter as practicable, patents will be issued conveying the fee-simple title in said lands to the State of Michigan.

With great respect, your ob't serv't,

JOHN WILSON, Commissioner.

24 And then read

Ехнівіт 16.

GENERAL LAND OFFICE, March 13, 1854.

His excellency Andrew Parsons, governor of Michigan, Lansing, Michigan.

SIR: I have this day deposited in the post-office, for transmission to your address, a diagram showing the swamp and overflowed lands selected as enuring to the State of Michigan, under the provisions of the act of Congress approved September 28th, 1850, in the district of lands subject to sale at Ionia, Michigan.

On said diagram the lands already approved to the State under said act are designated by being colored red, and those lands erroneously disposed of subsequent to the passage of said act are desig-

nated by being colored green.

You will please acknowledge the receipt of said diagram at your earliest convenience.

With great respect, your ob't serv't,

JOHN WILSON, Commissioner.

Plaintiff's counsel then offered in evidence certain schedules and receipts, from which it appeared that on May 15th, 1858, and February 6th, 1860, the surveyor general, under instructions from the Commissioner of the General Land Office, dated April 1st and 21st, 1857, in pursuance of acts of Congress, turned over to the State land office of Michigan, all the field-notes, maps, books, documents, papers, records, etc., appertaining to the surveys of the United States lands and land titles within the limits of the State of Michigan, inventories for which were made, which inventories, so far as it is deemed important to print the same, are as follows:

25

Ехнівіт 17.

First Inventory.

Field-notes.

The original field-notes of all the public surveys in the Lower Peninsula, north of the first correction line and west of the meridian, except township lines of T. 28 N, R. 1 west, and notes of resurvey of subdivisions of same.

Plats

The original plats of all townships in the Lower Peninsula, north of the first correction line, and west of the meridian, except T. 28 N, R. 1 west.

Miscellaneous papers, etc.

The notes of examination of original surveys. The notes of corrections by deputies where no resurveys required.

Second Inventory.

The original field-notes of all townships which have been resurveyed.

Record of field-notes of a portion of the public surveys in the Lower Peninsula contained in 59 volumes, to wit: * * * Townships 11 to 20 N, R's 1, 2, 3, 4, etc., west.

Record maps unbound * * * of 204 townships N of first correction line, and west of the meridian in the Lower Peninsula.

* One bundle of cancelled maps (resurveyed).

26

Miscellaneous papers.

Original lists of swamp lands selected in the State of Michigan with supplements.

Counsel then read

Ехнівіт 18.

STATE LAND OFFICE, Lansing, Mich., 17th April, 1855.

SIR: Under the second section of the act for the relief of purchasers and locators of swamp and overflowed lands, what proof or evidence shall you require that the lands there referred to are swamp, within the meaning of the act of Sept. 28th, 1850, and whether this proof must be submitted within 90 days from the passage of the act first above referred to.

The list of all swamp lands sold at this office will be very soon

transmitted to your department.

I have the honor to be, very respectfully,

Your obedient servant,

ALLEN GOODRICH.

Dep'y Commissioner. Hon. John Wilson, Com'r Gen'l L'd Office, Washington.

Endorsed: April 25, 1855.

And the acknowledgment of the same:

Ехнівіт 19.

GENERAL LAND OFFICE, April 25th, 1855.

Allen Goodridge, Esq., deputy commissioner, etc., Lansing, Michigan.

SIR: I have received your letter of the 17th instant, asking what proof will be required under the second section of the act of 2d March, 1855, that lands selected for the State and dis-27 posed of by the United States, were swamp and overflowed lands within the intent and meaning of the act of 28th Sept'r, 1850, and also whether the proof must be submitted within ninety days from the passage of the law.

In reply I would state that this office is not yet prepared to decide as to the nature of the proof which will be required under said act; it is not necessary, however, that it should be furnished within the time mentioned by you. When the report of sales shall have

been received and examined, full instructions will be issued. Very respectfully, your ob't serv't,

JOHN WILSON,

Commissioner.

And

Ехнівіт 20.

GENERAL LAND OFFICE, December 13, 1855.

Allen Goodrich, Esq., deputy comm'r State land office, Lansing, Michigan.

SIR: Referring to the letter to you from this office, dated April-25th last, I have to state that the State of Michigan, having by legis-

lative enactment agreed to abide by the field-notes of the surveys on file in the surveyor general's office as the basis on which to accept the swamp and overflowed lands granted by the act of 28th September, 1850, no further proof will be required in order to enable the State to avail herself of the benefits of the act of 2d March, 1855, "for the relief of purchasers and locators of swamp and overflowed lands."

A letter on this subject has this day been addressed to his excellency, the governor of Michigan.

Very respectfully, your ob't serv't,

THOS. A. HENDRICKS.

Commissioner.

Plaintiff's counsel then read

Ехнівіт 21.

GENERAL LAND OFFICE, December 13th, 1855.

His excellency Kinsley S. Bingham, governor of Michigan, Lansing, Michigan.

SIR: On the 12th of May last, the commissioner of the State land office, at Lansing, reported to this office a list of the swamp and overflowed lands selected as enuring to the State of Michigan, under the provisions of the act of Congress approved September 28th, 1850, which has been sold by the said State-the report being made in accordance with the provisions of the first section of the act, " for the relief of purchasers and locators of swamp and overflowed lands," approved March 2d, 1855. This list has been carefully compared with the books of this office, and, with the exception of the several tracts hereinafter mentioned, the sales by the State appear correct and regular.

S E 4 of S W 4 sec. 17, T 2 N, R 2 E, sold by the State December 15th, 1853, located at U. S. land office, October 25th, 1854, w't 2564, act of 1850.

28

S E ¼ of N E ¼ sec. 14, T 7 S, R 3 W, sold by the State Feb'y 10, 1855; sold by U. S. Feb'y 19th, 1852. Ctf. 30347.

In the first of the foregoing instances, the sale by the State having been made at a date prior to the location at the United States land office, no patent can issue by the President until the State shall release her claim to the land "in such form as shall be prescribed by the Secretary of the Interior."

In the latter case the United States sale having been made prior in date to the sale by the State a patent will issue, and the purchase-

money be paid over by the State.

I would call your attention to the following erroneous sales made by the State, to wit:

29

N W 1 of S E 1 sec. 17, T 3 S, R 4 E. Sold in 1844. W 1 of N E 1 1, " 4 " " 14 W. 1847.W i of S W i S E i of S W i 34, " 9 N " 14 E. 44 1836. 34, " 9 " " 14 " 66 1836.W 1 of N E 1 36, " 5 S, " 18 W. 44 1835.NW t of SE t " 36, " 5 " " 18 " 1835. NE of NE 1 " 30. " 7 N." 13 E. Twice sold by State.

Lists of land selected as swamp and overflowed, and sold by the United States after the passage of the law of the 28th of September, 1850, will be prepared and sent to the State authorities as speedily as is practicable, in order that the State may make claim for the purchase-money received therefor; also lists of the lands located after the passage of said act, accompanied with a special certificate authorizing the locations of other lands in lieu thereof.

The State of Michigan having, by legislative enactment, agreed to accept the field-notes of the surveys on file in the surveyor general's office as the basis on which to accept the lands granted by the law of 1850, and all of the selections having been made from those

records, no further proof is regarded as being necessary. With great respect, your ob't serv't,

THOS. A. HENDRICKS,

Commissioner.

And

Ехнівіт 22.

GENERAL LAND OFFICE, May 21st, 1860.

His excellency the governor of Michigan, Lansing, Michigan:

SIR: I enclose herewith a copy of the act of Congress approved March 12th, 1860, entitled "An act to extend the provisions of an 'Act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits,' to Minnesota and 30

Oregon — for other purposes."

In the second section of this act the period within which the selections under the grant of 1850 are to be made is limited. I have therefore to advise you that as the office of surveyor general for Michigan has been abolished, this office will proceed to ascertain from the transcript of the field notes on our files whether there are any lands of the class, in addition to those reported by the surveyor general, remaining to be certified to the State.

Be pleased to acknowledge the receipt hereof, and to inform me when the next session of the legislature of your State will commence, and if the session is limited by law, to advise me of the day

of adjournment.

With great respect, your ob't serv't,

JOS. S. WILSON, Commissioner. The inclosure referred to in the foregoing is

Ехнівіт 22 А.

An act to extend the provisions of "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits" to Minnesota and Oregon, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the provisions of the act of Congress entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits, approved September twenty-eight, eighteen hundred and fifty, be and the same are hereby extended to the States of Minnesota and Oregon: Provided, That the grant hereby made shall not include any

lands which the Government of the United States may have reserved, sold or disposed of (in pursuance of any law heretofore enacted), prior to the confirmation of title to be made

under the authority of the said act.

Sec. 2. And be it further enacted, That the selections to be made from lands already surveyed in each of the States, including Minnesota and Oregon, under the authority of the act aforesaid and of the act to aid the State of Louisiana in draining the swamp lands therein, approved March second, one thousand eight hundred and forty-nine, shall be made within two years from the adjournment of the legislature of each State at the next session after the date of this act, and as to all lands hereafter to be surveyed within two years from such adjournment at the next session, after notice by the Secretary of the Interior to the governor of the State that the surveys have been completed and confirmed.

Approved March 12, 1860.

Plaintiff's counsel then read

EXHIBIT 23.

GENERAL LAND OFFICE, Dec. 22d, 1858.

S. B. Treadwell, Esq., com'r State land office.

Sir: The subject of the swamp grant of Sept. 28th, 1850, so far as the same relates to the State of Michigan, in view of the basis adopted by the State in designating the land granted and the numerous resurveys made since the passage of the law, presents peculiarities which require an action on the part of the authorities of the State to enable us to adjust the business with proper regard to the evidences in the case To present the matter is the purpose of this communication.

The surveyors general of the district from time to time have reported selections in lists from the evidences of the surveys as originally made.

Such selections were examined with the records of this office, and so far as they were found vacant and not interfered with by settlements, were submitted to and approved by the Secretary of the Interior.

The authorities of the State were immediately thereafter furnished with certified copies of the lists containing the lands thus

approved.

Since such approvals were made and certified, the surveyors general, upon the evidences of the resurvey of many townships, have forwarded lists to supersede and abrogate the reports made in townships described therein.

These subsequent selections differ materially from the former

ones.

The patents for probably one-half of the townships in this condition as originally selected and reported, were prepared and transmitted prior to the receipt of the subsequent reports based upon the

evidences of the resurveys.

The balance of the selections originally made, and which are superseded by reports under resurveys, have been approved and certified, but are not carried into patent, nor can they be as thus approved, for the reason that the reports made after the resurveys are the only proper evidence upon which our action must be made,

in determining the grant.

So far as the patents have been issued, it is not intended to make any alteration in the lists, but when the indemnity provisions of the act of 2d March, 1855, come to be executed, a comparison between the reports based upon the original surveys and reports made after resurveys, will be made, and where the lands in the original reports do not appear in the subsequent reports, a deduction to that extent will be made from the indemnity certificate. This, it is believed, will be equal justice to all interested.

The paper herewith enclosed will show in what townships the lands have been patented as first selected, and those townships in which the lands are approved but not patented, and it is forwarded with the woment that the proper authorities of the State

with the request that the proper authorities of the State may elect to receive the grant, with reference to those townships in which the lands have not been patented, as the

selections are made upon the evidences of the resurveys.

It is our purpose to submit to the Secretary of the Interior, for a revocation of approval, so much of the lists of the several land districts as embrace the tracts in the condition specified; forwarding at the same time a list of the tracts as subsequently reported for his approval.

You will be pleased to present the matters herein contained to the

proper State authorities.

The patents for the swamp lands in Clinton, Ottawa and Newaygo counties, so far as the difficulties above described do not exist, are now in course of preparation, and will be forwarded as soon as they are completed.

Very respectfully, your ob't serv't,

THOS. A. HENDRICKS, Comm'r.

The lists referred to in the foregoing are as follows:

A list of townships in Michigan in which the tracts, as reported to the Commissioner of the General Land Office from the evidences of the original surveys, have been approved and patented under the grant of Sept. 28, 1850.

	1.	2.	3.		
31	4 E	35 Î E		4.	5.
31	5 "		15 1 W	22 - 2 W	37 2 W
31	6 "	~ ~	15 12 "	23 1 "	38 2 "
		35 3 "	16 1 "	23 2 "	00 2
31	7 "	35 4 "	16 12 "	24 1 "	
31	9 "	35 5 "	17 1 "		
32	4 "	35 6 "		24 2 "	
32	5 "	36 1 "	40 4	25 1 "	
32	9 "		18 4 "	25 2 "	
		36 2 "	18 5 "	26 1 "	
33	4 "	36 3 "	19 2 "	26 2 "	
33	5 "	36 4 "	19 4 "		
33	6 "	37 1 "		~ 1	
		0, 1	19 5 "	27 2 "	
34					
33	7 E	37 2 E	10 0 117	0.0	
34	1 "	38 1 "	19 6 W	28 2 W	
34	2 "		19 7 "	29 1 "	
		38 2 "	20 1 "	29 2 "	
34	3 "		20 2 "	30 2 "	
34	4 ",3	11 2 W	20 4 "		
34	5 "	12 2 "	20 5 "	30 1	
34	6 "	13 1 "		35 2 "	
34	7 "		20 6 "	36 1 "	
	8 "	13 2 "	20 7 "	36 2 "	
34	8	14 1 "	22 1 "	37 1 "	

A list of townships in Michigan in which the tracts as reported to the Commissioner of the General Land Office, from the evidences of the original surveys, have been approved but not patented under the grant of Sept. 28, 1850.

	15 15	2 14 13 14 13		23 23 23 24 24 24 24 25 25 25 25 26 5—331	5 6 7 9 3 6 8 9 4 6 7 8 9 4 6	"	29 12 " 45 30 7 " 45 31 6 " 46 31 7 " 46	20 18 19 20 18 19 20 18	"
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34 THE MICHIGAN LAND AND LUMBER CO., LIMITED, VS.

22	6	44	26	9	46	38	3	44	
22	7	**	26	10	66	39	3	64	
22	8	44	28	3	44	44	18	66	
22	9	44	28	4	44	44	19	64	
23	4	44	29	3	44	44	20	44	

35 And

Ехнівіт 24.

K. DEPARTMENT OF THE INTERIOR, E. K.
GENERAL LAND OFFICE,
WASHINGTON, D. C., December 27, 1871.

Charles A. Edmonds, Esq., State commissioner of lands, Lansing, Michigan.

Sir: In reply to your letter of the 13th inst. in regard to the swamp lands in township 31 N, range 8 west, Michigan, I have to say, that it appears from our records, that the lands selected as swamp in said township, according to the old survey, were approved by the Secretary of the Interior, Oct. 27, 1853, before the resurvey, and were, subsequently, on November 10, 1862, after the resurvey, patented to the State, according to the descriptions of the old survey.

This office has always regarded such approval and patenting final, especially when the description, according to the old plat, identifies the land with a reasonable approach to accuracy.

The General Land Office has no control over the State authorities in the sale of such lands by the State, and cannot determine the manner in which the State should describe them.

Very respectfully, your ob't serv't,

WILLIS DRUMMOND,

Commissioner.

36 And then read

Ехнівіт 25.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, WASHINGTON, D. C., Sept. 6, 1877.

(Address only the Commissioner of the General Land Office.) Register and receiver, Detroit, Mich.

GENTLEMEN: The tracts below described included in homestead entries in your district, are found to be in conflict with an apparent claim of the State of Michigan, under the swamp grant, to wit:

S E \(\frac{1}{4} \) S W \(\frac{1}{4} \) sec. 6, and N W fr'' \(\frac{1}{4} \) S W \(\frac{1}{4} \) S W \(\frac{1}{4} \)	7, 7	35	N	4	Е.,	Hd.	1756 1368
NW 1 NE 1 and NE 1 NW 1	29	66		66		44	1754
S 1 N E 1 and N E 1 S E 1	19	34	N	5	Е	44	1761
S 1 N W 1	19	4.6		66		66	1284
W 1 S W 1 and S E 1 S W 1	19	44		66		**	1273
NEISWI and NWISEI	19	"		16		66	1285
NWASEA	22	66		6.6		66	1738
SEINWI	33	44		44		6.6	1287

These lands are embraced in a supplemental list D of swamp selections, which was made and transmitted to this office after the townships in which they are situate were resurveyed, and in reference to which a letter, dated June 18, 1864, was transmitted to your office, and which contains the following:

After the resurveys were made, new selections of swamp lands were also made and transmitted to this office, but before these new selections were received the office had approved and patented to the State, most of the selections for the same townships under the old surveys. * * *

The "supplemental list D," to which you refer, was made from the resurveys, and was originally intended to abrogate or supersede the old list in the townships contained in

the old list in the townships contained in said "supplemental list D," but inasmuch as the selections under the old surveys in that portion of the Detroit district had been acted upon and carried into patent, that course was found to be impracticable.

As this office cannot recognize two lists of swamp selections for the same townships, made from different and conflicting surveys, and having, as stated, acted upon *one*, we must of necessity ignore

You will therefore consider the *original* list, made under the *old* surveys, a copy in part of which was sent you on 15th April last, as being the only list to govern you in the townships therein contained.

In view of the foregoing action of this office, the claim of the State under the swamp grant, to the lands in question, is held for rejection subject to appeal.

You will please notify the State authorities, and all others in interest, of the action of this office in the premises, and allow sixty days from the receipt of notice in which to file appeals, and at the expiration of that time report whether or not appeal has been taken, and withhold the lands from all further dispositions until otherwise instructed by this office.

Very respectfully, J. A. WILLIAMSON,

Commissioner.

Plaintiff's counsel then read from a duly certified copy from the General Land Office, the following, as

Ехнівіт 26.

No. 1-Grand River Land District.

F.	Parts of sections.	Sec.	Town north.	Range west.	Contents, acres.	
F.	E ½ S W fr. 4	7	18	3	80.00	* Nore.—This se tion in town 18 pear- to be sup
	Section	8	18	3	640.00	seded by sup- mental list No. 3
	S W fr. \(\frac{1}{2}\) N W fr. \(\frac{1}{2}\) N W fr. \(\frac{1}{2}\) S W fr. \(\frac{1}{2}\)	19	18	3	47.23 47.28	
	S E \ S W fr. \ \ \ \ \	44	46	"	40.00	
	S ½ S E ¼		*		80.00	
	S W 4	21	18	3	160.00	
	S ½*	22	18	3	320.00	
	N W 1 N 1		18	3	$160.00 \\ 320.00$	
	N ½ N E ¼		* 18	3	* 80.00	

SURVEYOR GENERAL'S OFFICE, DETROIT, March 29, 1852.

The above list of swamp lands in the Grand River land district, which has been made up in accordance with the instructions from the General Land Office, dated Nov. 21, 1850, embraces all the lands in said district, except such as may be found in townships which have been ordered to be resurveyed. The districts reported by Judge Burt and Hiram Burnham to be fraudulent are embraced in this list and marked "F."

The aggregate of unsold swamp lands (excluding thirteen town-ships situated near Grand Traverse bay), according to the 39 above statement amounts to 1,249,114.73 acres, in which is included the unsurveyed portion of township 9 N, R 1 W, estimated at 4,680 acres.

CHARLES NOBLE,

* Surveyor General.

U. S. LAND OFFICE, IONIA, MICH., Feb. 12, '52.

In the foregoing list, the descriptions marked sold, were sold prior to September 28th, 1850.

The descriptions sold since that date are marked giving date of sale—and noting the kind of payment at 10/—or \$1.25 per acre—

whether cash or warrants issued under act of Feb'y 11, 1847, or warrants issued under act Sept. 28, 1850.

The descriptions marked State, and heretofore selected by the

State of Michigan under different laws of Congress.

I have been over with the list twice, have endeavored to be accurate, but have probably made some mistakes.

LOUIS S. LOVELL, Reg.

Hon. the surr. gen'l, Detroit, Michigan.

*Rec'd Ap'l 12, 1852.

I certify that the foregoing list of swamp lands in the Grand River land district, Michigan, has been made out in conformity with instructions from the Commissioner of the General Land Office, dated Nov. 21, 1850, and his letter of Dec. 12, 1850, and that the location of the said swamp lands is determined by the rule laid down in said instructions of November 21.

> CHARLES NOBLE, Surveyor General.

Surveyor genera office, Detroit, March 29, 1852.

Also the following from the General Land Office as 40

Ехнівіт 27.

Swamp Lands.

* No. 4.

* Approved Oct. 27, 1853.

No. 1.

A list of swamp and overflowed lands selected as inuring to the State of Michigan, under the provisions of the act of Congress approved September 28th, 1850, in the district of lands subject to sale at Ionia, Michigan, viz:

† Certified copies of within list transmitted to gov. & R. R., Jan'y 13, 1854.

Gov. request for patents dated Jan'y 31, 1854.

Supplemental list No. 2, rec'd Nov. 3, 1853, and all townships in this list embraced in same erased.

Approvals entered in tract books.

Part in italie in red ink in original.

^{*} Parts in small type in pencil in original.

41	on.	Township.	ė	Surveyed area.	Unsurveyed area. Total area.
	Section.	Fown	Range.	Sur	Unsu a Fotal
Parts of sections.		N	w		s. Acres. Hdths. Acres. Hdths.
E 1 or S W fr'l 1	7	18	3	80.	*/
Section *	8	18	3	640.	
S W fr'l Y N W fr'l	19	18	*	47.23	/ *
N W fr'l o	6.6	10	66	47.28	
SE of SW rll		44	4.6	40. 80.	/
sw1	21	18	3	160.	*
s 1	22	18	*	320	*
N.W.1	28	18	*	160	*
N 1	29	"	3	320.	
N i of N E i	35	18 19		80. 39.44	*Selections in this township superseded by supplemental
S 1 of N W fr'l 1	.1	X	3	80. 160.	list No. 3.
S ½ of N E fr'l }	1	19	3	80.	
S 1 of N W fr'l 1	4.	19	1	80. 40.	*
E ½ of N E ¼	11	19	3	80.	
SElofSWl WiofS.Wl	26	19	3	40 80.	*
F. NE 1	17	20	3	160.	* Selections in this township super-seded by supplemental
W i of S E N E i of S E i	24	20	3	80. 40.	list No. 3.
84	27	20	3	320.	
N to SEL	28	20	3	80.	\"
S É of S É N Z of S W	44	**	**	40. 40.	

^{*} Part in small type in pencil in original. Lines crossing the page are in pencil in original.

Power of the state	Section.	Township.	Range.	Surveyed area.	Unsurveyed area.	Total area.
Parts of sections.			***	Acres. Hdths.	Acres. Hdths,	Acres. Hdths.
42 † Cheboygan dist.		N	W			
E d of N E l	12	28	3	80.		
E d of S E 1	66	66		80.		
*			*	00.	25	
tCheboygan dist.						
S E 1	1	29	3	160.		
**			*		*	
†Cheboygan dist.						
E ½ of S W }	2	28	4	80.		
*			- 66	00.	*	
W ½ 1	4	28	4	320.		
*			*	020,	*	
†Cheboygan dist.						
E d of S W fr'l	7	29	4	80.		
W fr'l d of N W fr'l d 1	8	29	4			
E 2 of N W fr'l 1		41	-	68.34		
*			*	80,00	*	
S E ½ of N W fr'l 1	9	29	4	40.	*	
*	"	2.7	*	40.	*	
E ½ of S W fr'l } 19	a	29	4	80.	*	
*	0	217	-18	80.	*	
E ½ 30	n.	29	4	200.00	*	
*		20	4	320.00		
S W fr'l of N W fr'l 3	0	99		95.14	*	
E ½ of S W fr'l 1		44	4	35.14		
*			*	80.		
E ½ of N W fr'l 1 31	1	29		00	*	
*	1	28	4	80.		
*Chebovean not wet retained 1 34			36		-30	

^{*}Cheboygan not yet patented, March 7, '57. L. D. R'y.

GENERAL LAND OFFICE, October 27th, 1853.

Respectfully submitted for approval.

JOHN WILSON.

Commissioner.

43

Department of the Interior, October 27, 1853.

The lands embraced in the foregoing list are hereby approved to the State of Michigan under the act of Congress app'd 28 September, 1850, subject to any valid legal claim that may exist thereto.

R. McCLELLAND, Secretary,

Plaintiff's counsel offered in evidence a certified copy from the State land office of supplemental list No. 3, Grand River district, bearing date May 12th, 1858, being surveyor general's list, and containing in township eighteen (18) north, of range three (3) west, several descriptions of land, among others the north half of the southwest quarter of section twenty-nine (29), but not the other descriptions in controversy; also the east half of the southwest quarter of section one (1) town eighteen (18) four (4) west as Exhibit 28

^{*} Part in small type in pencil in original. † Part in italic in red ink in original.

44

This exhibit was also withdrawn, as hereinafter stated, and is not

printed in full.

Plaintiff's counsel then moved the court for leave to discontinue as to the following parcels: North half of southwest quarter, section twenty-nine (29), town eighteen (18) north, range three (3) west, and the east half of the southwest quarter of section ten (10), town eighteen (18) north, range four (4) west, and to withdraw Exhibits 13, 14 and 28, relating thereto, which motion was granted and so ordered.

Plaintiff's counsel then read in evidence the field-notes of surveys of sections 20, 21, 22, 28 & 35, of township 18 north, range 3 west, Michigan, from duly certified copies from the State land office

of Michigan, as,

Ехнівіт 30.

Township 18 north, range 3 west.

Field-notes of U. S. Survey of Secs. 20, 21, & 22 from Corner of Secs. 22, 23, 26, & 27.

Hemlock, 6 N, 22 E 15. Do. 14 S, 67 W 42.

East. Random between secs. 22 & 27.

15.00 Stream 40, course N E.

15.50 Leave swamp.

46.00 Enter do. 48.50 Stream 40, course S E.

76.00 Leave swamp.

80.00 Intersect N & S line 16 north of post. Land—level, 3d rate. Timber—hemlock, pine, etc.

West. Corrected between secs. 22 & 27.

2.14 Sugar, 20 in.

36.20 Hemlock, 10 in.

40.00 Set qr. sec. post.

Sugar, 14 N, 42 W, 04. Hemlock, 10 S, 42 E, 32.

46.30 Hemlock, 18 in.

60.06 Do. 10 in.

80.00 Section corner.

East. Random between secs. 21 & 28.

20.00 Stream 20, course S E.

35.50 Leave swamp.

48.00 Enter swamp. 80.09 Enter sect. N & S line at post.

Land—level, 3d rate. Timber—hemlock, pine, maple, B. ash, &c.

45

West. Between secs. 21 & 28.

11.08 Cedar, 10 in.

32.17 Hemlock, 10 in.

40.04 Maple, 18 in. for qr. sec. post.

46.17 Cedar, 12 in. 72.68 Do. 16 in.

80.09 Section corner.

East. Random, between secs. 20 & 29.

23.00 Enter swamp.

80.03 Intersect N & S line, 8 north of post. Land and timber same.

West. Corrected between secs. 20 & 29.

4.18 Cedar, 10 in.

32.66 Do. 15 in.

40.01 Hemlock, 18 for qr. sec. post.

46.27 Hemlock, 6 in. 71.18 W. pine, 26 in.

80.03 Section corner.

North. Between secs. 19 & 20.

12.15 Beech, 8 in.

34.68 Do. 15 in.

40.00 Set qr. sec. post.

Sugar, 10 N, 11 W, 27. Beech, 6 S, 27 E, 38.

46.61 Hemlock, 18 in.

71.27 Do. 24 in.

80.00 Set post corner sections 17, 18, 19 & 20. Hemlock, 10 N, 36 E, 19.

Do. 20 S, 61 W, 03.

Land-rolling, 2d rate. Timber-hemlock, beech, maple, sugar & pine.

46

North. Between secs. 22 & 23.

9.94 Elm, 30 in.

34.59 B. oak, 24 in. 40.00 Set. qr. sec. post.

Hemlock, 16 S, 60 E, 25.

51.58 W. pine, 18 in. Do. 6 N, 60 W, 07.

68.18 W. pine, 18 in. 68.18 Do. 16 in.

80.00 Set post corner, sections 14, 15, 22 & 23.

Beech, 8 S, 8 E, 15. Do. 6 N, 55 W, 20.

Land-rolling, poor, 2d rate. Timber-pine, hemlock, beech, B. oak, elm, maple & sugar.

East. Random, between sections 15 & 22.

60.00 Enter swamp. 75.00 Left swamp.

79.86 Intersect N & S line at post.

Land—except swamp, rolling, 2d rate. Timber—hemlock, beech, pine, sugar, cedar, B. ash, elm, maple, &c.

6 - 331

Do. 41.35 Hemlock, 14 in. 76.13 Do. 15 in.

79.86 Section corner.

East. Random, between secs. 16 & 21.

31.00 Enter swamp. 70.00 Leave do.

79.82 Intersect N & S line 22 N of post. Land—level, 3d rate. Timber—hemlock, cedar, maple, B. ash, elm, etc.

16 N, 78 E, 19.

47

West. Corrected between secs. 16 & 21.

44.26 Maple, 15 in. 33.17 Cedar, 8 in.

33.17 Cedar, 8 in. 39.91 Set qr. sec. post.

> Cedar, 10 N, 16 E, 37. Do. 18 S, 51 W, 08.

49.27 Hemlock, 10 in. 76.25 Do. 8 in.

79.82 Section corner.

East. Random, between sections 17 and 20.

21.00 Stream 20, course S E.

80.24 Intersect N & S line, 16 N of post. Land and timber same as last mile.

West. Corrected between sections 17 & 20.

2.18 Beech, 15 in. 31.81 Do. 8 in.

40.12 Set qr. sec. post.

Maple, 15 S, 18 W, 06. Hemlock, 10 N, 28 E, 07.

41.13 Beech, 15 in. 78.10 Do. 11 in.

80.24 Section corner.

North. Between sections 21 & 22.

3.35 W. pine, 36 in.

16.00 Stream 6, course S E.

28.00 Leave swamp. 32.00 Beech, 18 in.

40.00 Set qr. sec. post.

Beech, 12 N, 18 W, 15. Do. 10 S, 35 E, 35.

46.10 Lynn, 12 in.

65.20 Hemlock, 14.

48

80.00 Set post corner sections 15, 16, 21 & 22.

Hemlock, 10 S, 44 W, 17.

Beech, 18 N, 62 E, 27.

Land—mostly rolling, 2d rate. Timber—hemlock, beech, pine, lynn & sugar.

North. Between sections 20 & 21.

2.13 Hemlock, 6 in.

21.00 Leave swamp.

36.41B. ash, 18.

39.00Stream 20, course S E.

40.00 Set qr. sec. post.

Maple, 18 N, 27 E, 61.

Do. 13 S, 08 W, 14. Beach, 15 in.

46.27 76.19

Do. 20 in. 80.00 Set post, corner sections 16, 17, 20 & 21.

Hemlock, 12 N, 78 E, 22.

15 S, 78 W, 41. Land-level, poor, 2d rate. Timber-hemlock, pine, maple, B. ash, beech & sugar.

Field-notes of U. S. Survey of Sections 28 & 29 from Corner of Sections 28 & 29, 32 & 33.

> Cedar, 12 S, 20 E, 08. Elm, 14 N, 20 E, 09.

East. Random, between sections 29 & 32.

12.00 Stream 30, course S E.

32.00 Do. NE.

80.16 Intersect N & S line 20, S of post. Land-level, 3d rate. Timber-hemlock, pine, cedar, B.

ash, elm, maple, aspen, &c.

West. Corrected between secs. 29 & 32.

4.18 Hemlock, 12 in. 27.13

49

Do. 18 in. 40.08 Set qr. sec. post.

Hemlock, 18 south, 316.

47.28Hemlock, 18 in.

71.21 Hemlock, 15 in.

80.16 Section corner.

North. Between sections 29 & 30.

7.12 Hemlock.

13.00Stream 30, course S E.

14.00 Enter windfall, course N E.

40.00Set qr. sec. post.

Aspen, 7 S, 38 W, 11. Do. 8 N, 81 E, 14.

44	THE MICHIGAN LAND AND LUMBER CO., LIMITED, VS.
	5.00 Enter swamp.
	7.13 Hemlock, 6 in.
	8.17 Do. 20 in. 7.00 Leave swamp.
	7.00 Leave swamp. 0.00 Set post corner of sections 19, 20, 29 & 30.
0	Hemlock, 16 S, 27 E, 11.
	W. pine, 22 N, 18 W, 41.
	Land—level, 3d rate. Timber—hemlock, cedar, pine, B. ash, &c. March 10th.
E	ast. Random between sections 28 & 33.
80	2d rate. Timber—hemlock, pine, beech, maple, &c.
	est. Corrected between sections 28 & 33.
	1.67 Maple, 10.
	4.46 W. pine, 24. 0.00 Set gr. sec. post.
-11	0.00 Set qr. sec. post. Hemlock, 12 N, 48 W, 30.
	Do. 14 S, 02 E, 25.
50	20, 02 1, 20.
43	3.50 W. pine, 20.
	7.46 Do. 18.
80	0.00 Section corner.
No	rth. Between sections 28 & 29.
25	5.00 Stream 30, course N E.
26	5.18 Hemlock, 16.
	.00 Enter swamp.
	.62 Cedar, 10. .00 Set gr. sec. post.
40	0.00 Set qr. sec. post. Cedar, 8 N, 76 W, 13. Do. 15 S, 16 E, 27.
46	.13 Hemlock, 6.
	.27 Do. 8.
80	.00 Set post corner of secs. 20, 21, 28 & 29.
	Hemlock, 16 S, 76 W, 28.
	Cedar, 11 N, 18 W, 11. Land—level, 3d rate. Timber—hemlock, cedar, B. ash,
	aspen, pine, beech & sugar. March 8th.
Non	
	.61 Beech, 16.
	.28 Do. 20. .00 Set gr. sec. post.
40	.00 Set qr. sec. post. Hemlock, 18 N, 66 E, 17. Do. 8 S, 15 W, 09.
46	31 Maple, 15.
	90 Enter swamp.
68	00 Stream 35, course N E.

80.00 Set corner post of secs. 21, 22, 27 & 28. Hemlock, 12 N, 62 E, 15.

Do. 17 S, 28 W, 46.

Land-level, 3d rate. Timber-hemlock, pine, maple, beech, &c.

51

East. Random, between sections 21 & 28.

20.00 Stream 20, course S E.

35.50 Leave swamp. 48.00 Enter swamp.

Intersect N & S line at post. Land-level, 3d rate. Tim-80.09 ber-hemlock, pine, maple, B. ash, &c.

West. Between sections 21 and 28.

11.08 Cedar, 10. 32.17

Hemlock, 10. 40.04 Maple, 18 for qr. sec. post.

46.17 Cedar, 12. 72.68 Do. 16.

80.09 Section corner.

East. Random, between sections 20 & 29.

23.00 Enter swamp.

80.03 Intersect N & S line, 8 N of post. Land and timber same.

West. Corrected between sections 20 & 29.

4.18 Cedar, 10. 32.66 Do. 15.

40.01 Hemlock, 18 for qr. section post.

46.27 Hemlock, 6. 71.18 W. pine, 26.

80.03 Section corner.

Field-notes of Section 35, from Corner of Sections 35 & 36.

Beech, 18 N, 43 W, 18. Do. 10 N, 42 E, 30.

East. On south side of section 35.

40.00 Set qr. sec. post.

80.00 Set temporary post corner of secs. 35 & 36. Land-rolling, 2d rate. Timber-hemlock, pine, beech, elm, maple, &c.

52

West. Corrected on the south side of section 35.

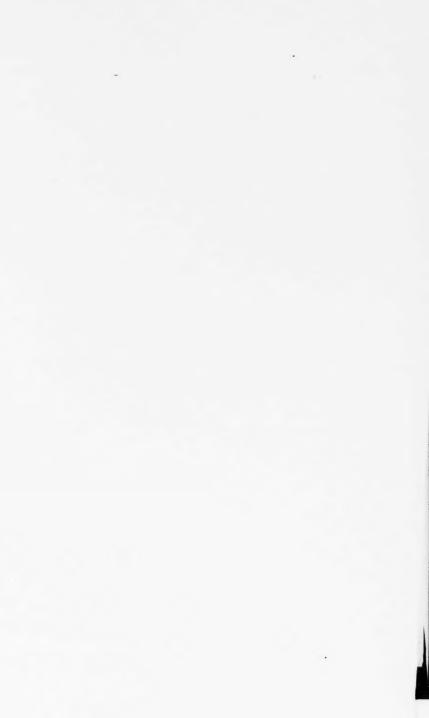
8.06 Pine, 48. 31.31 Do. 20.

40.00 Set qr. sec. post.

Beech, 11 N, 80 E, 04. Maple, 13 N, 51 W, 21.

	11
46	THE MICHIGAN LAND AND LUMBER CO., LIMITED, VS.
48.06	Pine, 20.
66.75	Do. 22.
80.00	Set post corner of secs. 34 & 35.
	Aspen, 14 N, 23 E, 13. Do. 10 N, 28 W, 15.
North.	
$\frac{6.95}{35.02}$	W. pine, 18. Do. 20.
40.00	Set qr. sec. post.
10.00	Beech, 14 S, 10 W, 07.
	W. pine, 16 N, 06 E, 04.
43.64	Hemlock, 12.
60.94	W. pine, 20.
80.00	Set post corner of secs. 26, 27, 34 & 35. Beech, 12 N, 65 E, 15. W. pine, 18 S, 65 W, 11.
	Land—rolling, 2d rate. Timber—hemlock, pine, beech,
N	sugar, &c.
North. 6.03	Between sections 35 & 36. Sugar, 14.
28.00	Beech, 12.
40.00	Set qr. sec. post.
	Hemlock, 14 N, 7 E, 22. Do. 10 S, 68 W, 05.
42.24	Hemlock, 10.
50.00	Enter swamp.
57.00	Stream 40, course S E.
53	
58.00	Leave swamp.
72.10	Hemlock, 18.
80.00	Set post, corner of sections 25, 26, 35 & 36. Hemlock, 14 N, 79 E, 09. Do. 20 S, 26 W, 60.
	Land—except swamp, rolling, 2d rate. Timber—beech, hemlock, pine, cedar, maple, sugar.
East.	Random between sections 26 & 35.
30.00	Enter swamp.
58.00	Stream 40, course S E.
65.00	Leave swamp.
79.72	Intersect N S line, 20 N of post. Land—level, 3d rate. Timber—hemlock, pine, maple, cedar, B. ash.
West.	Corrected between sections 26 & 35.
4.28	Hemlock, 12.
$21.35 \\ 39.86$	Do. 14.
39.80	Set qr. sec. post. Cedar, 6 N, 47 E, 09. Do. 6 S, 76 W, 14.
41.08	W. pine, 20.
79.21	Section corner.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

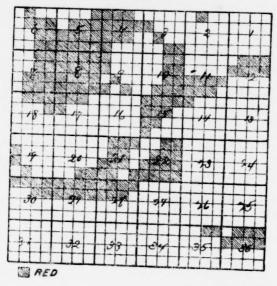


Mr. 331. Sp. 55 a

MAP OF THE IONIA LAND DISTRICT, MICHIGAN.

The tracts colored red and green have been selected as swamp lands enuring to the State of Michigan under the act of 28th September, 1850. Those colored green have been sold and located since the passage of said act.

Town 18 North, Range 3 West.

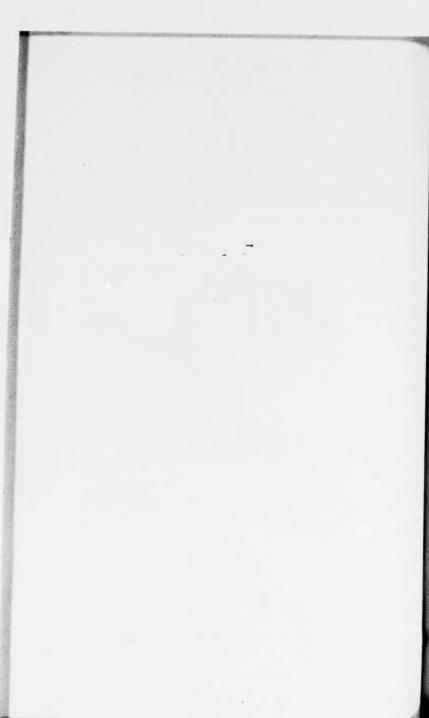


GENERAL LAND OFFICE, / MARCH 9th, 1854.

This diagram having been carefully compared with lists numbers 1, 2, 3 & 4 of swamp and overflowed lands granted to the State of Michigan under the act of Congress approved 28th September, 1850, in the district of lands subject to sale at Ionia, Michigan, certified copies of which lists were transmitted to the Governor of said State on the 13th, 16th and 18th January, 1854, and found to be correct, is hereby approved.

JOHN WILSON,

Commissioner.



I hereby certify that in pursuance of a contract with E.S. Haines, surveyor general of the United States, for the States of Ohio, Indiana and Michigan, this 20th day of July, 1838, and in strict conformity to the laws of the United States and the instructions of said surveyor general, I have surveyed and subdivided into sections, township 18 north, range No. 3 west, in the State of Michigan, and I do further certify that the foregoing are the true and original field-notes of said survey, executed as aforesaid.

Certified this 13th day of March, 1839.

HENRY NICHOLSON, D. Surveyor.

Plaintiff's counsel then put in evidence, from the records of the State land office, the plat of survey of township 18 north, of range 3 west, of Michigan, and the same was marked

Ехнівіт 31.

(See map opposite.)

(Here follows map marked page 54a.)

RICHARD KERNS, a witness produced and sworn on the part of

the plaintiff, testified as follows:

I reside at Lansing, Michigan, and hold the position of chief clerk in the State land department. I have with me from the State land office a map of swamp lands approved to the State of Michigan, in the Ionia land district.

Witness produced map, and the same was put in evidence by plaintiff's counsel as

Ехнівіт 32.

(This map shows lands approved in a large number of towns in Ionia land district, starting from the intersection of the base line and the principal meridian of Michigan, running thence north to the line between townships 10 & 11 north, thence west to the line between ranges 2 & 3 W, thence N on said line to the straits of Mackinaw, and from the said intersection of the base line and principal meridian west to the range line between ranges 6 & 7, thence north to township line between townships 3 & 4 N, thence W on said line to Lake Michigan, including all between these lines and the lake, and so far as relates to the township in question, together with the certificates attached, is as follows:)

55

(See map opposite.)

(Here follows map marked page 55a.)

Cross-examination:

There are other maps on file in our office in relation to swamp lands that have been transmitted to our department from time to time from Washington.

OSCAR PALMER, a witness produced, sworn and examined on the

part of the plaintiff, testified as follows:

I reside in Grayling. The U.S. land office is located there. I am the register of the U.S. land office there, and have held that position a little over two years. I have with me in my possession the tract book, in use in that office, embracing Ionia district 1, and town 18 N, 3 W.

Q. Will you state whether or not the southeast quarter of the southeast quarter of 20, 18 N, 3 W; the N W quarter of the S W quarter of section 21, 18, 3; the N W of the S E of 22, 18, 3; the N W of the N E quarter of 35, 18, 3; whether they were vacant and unappropriated and not interfered with by actual settlements under the laws of the United States on the 3d day of March, 1857.

A. The tract book does not show any entry of that date.

Q. Does it show any appropriation of those lands to any purposes other than swamp lands?

A. No, sir.

Q. Does it show any settlement under the laws of the United States?

A. No, sir.

Q. Lands which do not appear upon that plat book, will you state how they are regarded in the land office.

A. They are regarded as vacant land.

COURT: I understand your question to be lands not appearing on this book are regarded as vacant.

Mr. CHAMPLIN: Yes, sir; lands not appearing on this book are

regarded as vacant.

- Mr. Pond: Do I understand that nothing appears on that book?
- A. It appears that the descriptions read have been at some time selected as swamp lands and canceled.

Q. Selected under what list?

A. List No. 1.

Q. And there appears to be a red mark there through it?

A. Yes, sir.

Q. It does not show by what authority?

A. No. sir.

Cross-examination:

Q. Is there nothing on that book to show those lands were in fact withdrawn from the market in 1850?

A. There is a record on this book of the withdrawal; simply a cancellation by a cross—red ink. The plat book is another record from my office; it shows the original and resurvey, the original plats being canceled. In regard to the disposition of the land, the register is entirely governed by orders from Washington from the General Land Office, and if an order comes that withdraws from market a large quantity of land, there should be a mark made on both tract book and plat book.

Q. Do you know whether there is?

A. I have never found any memorandum on the tract book excent in a single instance in the old Genesee office. I have lived in this State fifty years. I do not remember, in 1856, when the land grants were made to the railroads. I was fifteen years old, and not much interested then.

Q. In order that you may see just what I want, I think your honor will take judicial notice of the fact, and it appears in the public documents. That record shows that in 1856 there were large withdrawals in Michigan of public lands within the probable limits of those roads to which grants had been made in June, 1856, by act of Congress. Now, what is there on your records to show those withdrawals?

A. Absolutely nothing.

57 Q. What is there on your files?

A. If I answered that directly, I should say absolutely nothing that I have been able to find, excepting memoranda of previous registers, indicating to me that there was such withdrawal, but I have been unable in the office to find the official letters withdrawing any of the lands. The condition of the records and files in my office is execrable. There is neither beginning or end to them. There are a good many that should be there that I cannot finda good many that should be there to make the connection. I have no official knowledge in regard to these official withdrawals. I do not know anything about their limits.

Redirect examination:

Q. Mr. Weber asked you if there was anything to indicate any reference to your plat to the condition of these lands, and you said that the plat book showed there had been a resurvey. Will you open to these towns on your plat book; have you 18, 3, of the origi-

nal survey?

58

A. Yes, sir. The indication that there has been a resurvey is that on the original plat, written across the face is the word "Resurveyed," and followed by the resurveyed plat; this plat shows these lands were offered for public sale June 15th, 1840, by President's proclamation. On the original plat there are indications or marks that indicate that by original survey of the SE quarter of the SE quarter of 20, 18, 3, was swamp, and the same with reference to the N W of the southwest of 21, 18, 3; the N W of the S E of 22, 18, 3; the N W of the N W of 28, 18, 3; and the north half of the northeast quarter of 35, 18, 3.

Q. Now, in your office, you say it is marked as swamp. the indication, as understood by the land officers as indicating the

swamp lands on those plats?

A. By direction of the Commissioner of the General Land Office, all swamp lands are marked S on the plat by the register of the local office.

Q. Does that S appear here?

A. Yes, sir, on the descriptions read. 7 - 331

Q. Is it in pencil or what?

A. First in pencil and then in red ink. (Witness turns to the plat of resurvey and testified:) On this map of the resurvey is indicated that it was received at the land office June 3d, 1858, signed John C. Blanchard, register. The date of the surveyor general's certificate on this map is May 12th, 1858, and is the marked resurvey at the top.

Recross-examination:

I came into possession of the books November 2d, two years ago.

Q. Then what you say in relation to these matters is all from the

record?

59

A. From the record and not from personal knowledge.

Q. Now your tract book that you first referred to, I wish you would take the S E quarter of the S E quarter of section 20, 18, 3, and read to us just what appears on your tract book with reference to that description.

A. The first entry includes the entire south half of the southeast quarter of the section, 80 acres swamp land under act of the 28th of

September, 1850, approved. See list No. 1.

Q. What condition is that in?

A. That is cancelled by a red line drawn through the entire entry.

Q. Any further entry upon your tract book with relation to the

southeast of the southeast of section 20?

A. The southeast of the southeast of section 20, 40 acres, at \$9.05, \$362, purchased by William A. Rust. Register's number 20833, November 12, 1869. Number of the certificate of purchase 20833, patented to William A. Rust, May 10, 1870, recorded in volume 38, on page 138. I have now given you from that tract book all that appears with reference to the southeast of the southeast.

Q. Give us all that appears in the southeast quarter of the

southwest quarter of section 21?

A. The entire southwest quarter of section 21, 160 acres. Swampland act September 23d, 1850. Approved. See list No. 1. Canceled in the same way as the other.

Q. And then the northwest of the southwest?

A. The northwest of southwest. The entire southwest quarter, 21, 18, 3, 160 acres. Located with agricultural college scrip, 603, by Wellington R. Burt, October 16, 1866. Canceled. See Commissioner's letter, July 30, 1869. And further, the northwest of southwest of section 21, 18, 3, 40 acres, at \$10 an acre, \$400.00. William A. Rust. Number of register's return, 20836. November 12, 1869. Number of certificate of purchase, 20836. Patented to William A. Rust, May 10, 1870. Recorded volume 38, page 141. This is all that appears on the tract books with reference to the parcels in section 20, 18, 3, and 21, 18, 3. With reference to the northwest of southeast of section 22, it shows the entire south half of section 22, 18, 3, is 360 acres placed as swamp land under the act of September

28, 1850, approved. See list No. 1. Canceled the same as the others with a red line. And the entire southeast quarter, 160 acres. Located by agricultural college scrip, 691, by Wellington R. Burt, October 16, 1866. Canceled. Commissioner's letter, July 30, 1869. And the next is northwest of southeast quarter, 40 acres, at \$8.50 an acre, \$340.00. William A. Rust. Number of register's return, 20871. November 13, 1869. Number of certificate of purchase, 20871. Patented to William A. Rust, May 10, 1870. Patent recorded in volume 38, page 176. This is all that appears on the tract book with reference to that description of land. With reference to the northwest of northwest of section 28, it shows the entire northwest quarter is included in the swamp-land list exactly the same as the others, and canceled the same. The northwest of the northwest quarter of other lands is located with military bounty

land, 55, 77427. By Wellington R. Burt, October 16, 1866.

Canceled. Commissioner of Land Office, July 30, 1869. And the northwest of the northwest, 40 acres, \$12.30, \$492.00. Purchased by William A. Rust. Number of register's return, 20872. November 13, 1869. Number of certificate of purchase, 20872. Patented to William A. Rust, May 10, 1870. Patent recorded in volume 38, page 177. With reference to the north half of the northeast quarter of section 35, it shows the north half of the northeast of section 35, 18, 3, is included in the same swampland list, and canceled the same. The north half of northeast quarter, 80 acres. Cash entry at \$1.25 an acre, \$100.00. Purchased by Addison P. Brewer. Number of register's return, 19223. October 31, 1866. No record of patent nor certificate of purchase.

Q. Is there no record of cancellation of Brewer's entry?

A. No, sir; no record of issue of certificate of purchase. There is a check crossed in pencil mark in the column for the number of receipt. That indicates nothing to me.

Q. Is there anything on that book that shows when the cancella-

tion of the swamp-land selection was made?

A. No, sir.

Q. I mean the cancellation of the entry?

A. No, sir; there is no record of it. I have in my office a sales book, but haven't it here. Wm. A. Rust made the purchase referred to at a public sale. The amounts which I stated in giving your sales to Wm. A. Rust—the per-acre statement and the total statement—indicate what he paid in cash to the United States receiver at that time on the purchase of the land described. With reference to that plat book, I said that the plat of the original survey has written upon it the word "Resurveyed." It was in that condition when it came to my hands. The new plat which is marked "Resurveyed" took the place of this. This resurvey plat is certified to May 12, 1858, and in our office is recognized as the existing plat, and the one now in force. No other plat recognized in the office as in force. There are indications on that plat of resurvey of State sweems lands indicated in the

survey of State swamp lands, indicated in the same manner that they are upon the plat of the original survey. And upon the plat of the resurvey some of the same pieces

of land are marked with the letters indicating swamp land that are marked upon the plat of the original survey. According to the plat of resurvey and the marks indicating the State swamp lands, the southeast of the southeast quarter of section 20 is not State swamp land, and the northwest quarter of the southwest quarter of section 21 is not. The northwest of southeast of 22 is not. The northwest of northwest of section 28 is not, and the north half of the northeast quarter of section 35 is not.

Redirect examination by Mr. CHAMPLIN:

Q. Will you turn to the map of the old survey and see whether there are any indications on that map of any one entering the land?

A. Yes, sir; a good many entries.

Q. Made upon the basis of that old map?

A. Yes, sir.

- Q. Will you look at your tract book and state whether or not the Government sold large quantities of land in every section in 1853, prior to the resurvey?
 - A. Yes, sir; there are lands sold. Q. In every section in that town?

A. Yes, sir.

Q. You gentlemen have undertaken to show the Government only recognized that plat over there. They certainly recognized this plat until 1853. I want to show that during this time, prior to that time, they recognized this old survey.

Objected to as immaterial.

Mr. Champlin: I think it is material in showing how the Land Department dealt with this land—how they regarded it; how they regarded these surveys on this map.

COURT: I think I will have to exclude that.

To which ruling plaintiffs took exception.

Q. I will ask you if it was not a fact that in this same town, and some of these sections, land was sold. Take 20, 22, 21, 28 and 35, and see if they were not sold on the same section before the resurvey.

Objected to as immaterial.

Mr. Champlin: I propose to show that the Land Department of the Government recognized the validity of the old survey and the old maps by selling Government land. There never existed in these townships any controversy, and upon these sections in controversy, up to March, 1857.

COURT: I don't understand this witness to testify that these lands sold to Rust and others were sold according to the old survey.

Mr. Champlin: It would be according to their survey. There would not be any difference in the description. I will ask the witness if there is any difference in the two surveys.

A. No, there is not.

Mr. Stark: Do you propose in that offer to prove that since the making of the resurvey the Government has sold lands according

to the old plat?

Mr. Champlin: My question is limited down to March 3, 1857; that is, prior to this map. I may state that the further purpose is to show that it was a recognized Government survey, and in actual use by the Government up to and including March 3, 1857.

Defendant's objection was sustained by the court, to which ruling plaintiff excepted.

Recross-examination:

Q. Do not the entries upon the face of the resurveys show that the lands were sold by that, and that that plat was the plat recognized by the Government from the time of the resurvey down?

A. Certainly.

63

Q. Does it now show upon its face sales made by the Government prior to the time you took possession?

A. Yes, sir.

Q. So that records of your office would show all the plats

of the resurvey?

A. Only from June 3, 1858, the date it was received at the land office. It was certified May 12, 1858. The plat of resurvey shows it was resurveyed in 1856 by Geo. H. Cannon, deputy surveyor. The month is not given.

Plaintiff's counsel then read in evidence the following patent, which had been duly recorded as

Ехнівіт 33.

No. 42323.

(Copy.)

In the name of the people of the State of Michigan.

To all to whom these presents shall come, Greeting:

Whereas, Edward W. Sparrow, of the county of Ingham, on the tenth day of October, in the year one thousand eight hundred and eighty-seven, purchased from the State of Michigan the lands hereinafter described, pursuant to the laws of said State, then in force, and in such cases made and provided.

And whereas, the said Edward W. Sparrow has paid for said lands, by the entire completion of the work contemplated by act No. 130 of the session laws of 1883, as fully appears by the certificate of the proper officer, now on file in the office of secretary of state of the State of Michigan, being certificate No. 22249 for swamp land.

Now, therefore, I, Cyrus G. Luce, governor of said State, in consideration of the premises, and by virtue of the power and authority vested in me by the laws of the said State, in such cases made and provided, do issue this patent in the name and by the authority of the people of the State of Michigan, hereby granting and confirm-

ing unto the said Edward W. Sparrow, and to his heirs and 64 assigns forever, the following piece or parcel of land, situate in the State aforesaid, to wit, the southwest quarter of the northwest quarter of section three (3); the west half of the northeast quarter, and the northeast quarter of the southwest quarter of section seven (7); the southwest quarter of the southwest quarter of section eight (8); the southwest fractional quarter of the northwest quarter; the northwest fractional quarter of the southwest quarter. and the southeast quarter of the southwest quarter of section nineteen (19); the south half of the southeast quarter of section twenty (20); and the northwest quarter of the southwest quarter of section twenty-one (21), all in town eighteen (18) north, range three (3) west, containing four hundred and fifty-four and fifty-one one-hundredths (454.51) acres, according to the returns of the surveyor general, to have and to hold the above described and granted premises unto the said Edward W. Sparrow, and to his heirs and assigns, to his and their sole and only proper use, benefit and behoof, forever, as provided by the laws of said State, against the lawful claim or claims of all persons whatsoever.

In testimony whereof, I have caused these letters to be made patent,

and the great seal of the State to be hereunto affixed.

Given under my hand, at Lansing, this fourteenth day of October, in the year of our Lord-one thousand eight hundred and eighty-seven, and of the Independence of the United States of America the one hundred and twelfth.

C. G. LUCE.

By the governor: F. B. EGAN,

Dp. Secretary of State.

Recorded Book 67, page 427.

Plaintiff's counsel then read the following patent, which had been duly recorded as

Ехнівіт 34.

No. 42324.

(Copy.)

In the name of the people of the State of Michigan.

To all to whom these presents shall come, Greeting:

Whereas, Edward W. Sparrow, of the county of Ingham, on the tenth day of October, in the year one thousand eight hundred and eighty-seven, purchased from the State of Michigan the lands hereinafter described, pursuant to the laws of said State, then in force, and in such cases made and provided.

And whereas, the said Edward W. Sparrow has paid for said lands by the entire completion of the work contemplated by act No. 130 of the session laws of 1883, as fully appears by the certificate of the proper officer, now on file in the office of secretary of state of the State of Michigan, being certificate No. 22249 for swamp land:

Now, therefore, I, Cyrus G. Luce, governor of said State, in consideration of the premises, and by virtue of the power and authority vested in me by the laws of the said State, in such cases made and provided, do issue this patent in the name and by the authority of the people of the State of Michigan, hereby granting and confirming unto the said Edward W. Sparrow and to his heirs and assigns forever, the following piece or parcel of land, situate in the State aforesaid, to wit: The north half of the southeast quarter, and the southeast quarter of the southeast quarter of section twentytwo (22); the northwest quarter of the northwest quarter of section twenty-eight (28); the southwest quarter of the northeast quarter, the northwest quarter of the northwest quarter, and the north half of the southwest quarter of section twenty-nine (29); the north half

of the northeast quarter of section thirty-five (35), town eighteen (18) north, range three (3) west; the east half of the 666 southwest quarter of section one (1), and the southeast quarter of the southwest quarter of section eleven (11), town eighteen (18) north, range four (4) west, containing five hundred and twenty (520) acres, according to the returns of the surveyor general, to have and to hold the above described and granted premises unto the said Edward W. Sparrow and to his heirs and assigns, to his and their sole and only proper use, benefit and behoof, forever, as provided by the laws of said State, against the lawful claim or claims of all persons whatsoever.

In testimony whereof, I have caused these letters to be made pat-

ent, and the great seal of the State to be hereunto affixed.

Given under my hand, at Lansing, this fourteenth day of October, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United SEAL. States of America the one hundred and twelfth.

C. G. LUCE.

By the governor: F. B. EGAN,

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Dp. Secretary of State.

Recorded, Book 67, page 428.

And a deed from said Edward W. Sparrow to plaintiff for the lands in controversy, which had been duly recorded

EXHIBIT 35.

(Copy.)

This indenture, made this thirty-first day of October, in the year of our Lord one thousand eight hundred and eighty-seven, between Edward W. Sparrow (bachelor) of Lansing, Ingham county, Michigan, of the first part, and Michigan Land and Lumber Company (Limited), a copartnership association organized under the laws of the State of Michigan, of the second part.

Witnesseth, that the said party of the first part, for and in consideration of the sum of eight thousand seven hundred

and seventy dollars to bim in hand paid, by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, remised, released, aliened and confirmed, and by these presents do grant, bargain, sell, remise, alien and confirm unto the party of the second part, and to its successors and assigns forever, all those certain pieces or parcels of land, situate, lying and being in the county of Clare, State of Michigan, known and described as follows, to wit: The southwest quarter of the northwest quarter section three (3); the west half of northeast quarter, the northeast quarter of southwest quarter section seven (7); the southwest quarter of southwest quarter section eight (8); the southwest fractional quarter of northwest quarter, the northwest fractional quarter of southwest quarter, the southeast quarter of southwest quarter section nineteen (19); the south half of southeast quarter section twenty (20); the northwest quarter of southwest quarter section twenty-one (21); the north half of southeast quarter, the southeast quarter of southeast quarter section twenty-two (22); the northwest quarter of northwest - section twenty-eight (28); the southwest quarter of northeast quarter, the northwest quarter of northwest quarter, the north half of southwest quarter section twenty-nine (29); the north half of northeast quarter section thirty-five (35), town eighteen (18) north, of range three (3) west; the east half of southwest quarter section one (1); the southeast quarter of southwest quarter section eleven (11), town eighteen (18) north, range four (4) west, containing nine hundred seventy-four and fifty-one hundredths (974.51) acres according to the survey thereof, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; and the reversion or reversions, remainder or remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim or demand whatsoever, of the said party of the first part, either in

law or equity, of, in, and to the above-bargained premises, with the said hereditaments and appurtenances; to have and to hold the premises as before described, with the appurtenances, unto the said party of the second part, its successors and assigns forever. And the said party of the first part, for his heirs, executors and administrators, does covenant, grant, bargain and agree to and with the said party of the second part, its successors and assigns, that he, Edward W. Sparrow, the said party of the first part, has not heretofore done, committed or wittingly or willingly suffered to be done or committed, any act, matter, or thing whatsoever, whereby the premises hereby granted, or any part thereof, is, are or shall or may be charged or incumbered in title, estate or otherwise howsoever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

EDWARD W. SPARROW. [L. s.]

Signed, sealed and delivered in presence of—FRANK E. CHURCH.

WM. VAN BUREN.

STATE OF MICHIGAN, County of Ingham, 88:

On this eighth day of November, in the year of our Lord one thousand eight hundred and eighty-seven, before me, a notary public in and for said county, personally came the before-named Edward W. Sparrow, known to me to be the person who executed the foregoing instrument, and acknowledged the same to be his free act and deed.

FRANK E. CHURCH,

Notary Public in and for Ingham County, Mich.

George W. Doxie, after being duly sworn on behalf of the plaintiff, testified as follows:

I reside at Cadillae, Mich. For the last twenty-odd years I have been estimating standing timber; still doing it; that is my business. I examined some land for Mr. Sparrow; I have

been for the last eight years, off and on; for him the same as anybody else. I examined the southeast quarter of the southeast quarter of the southwest quarter of section 20, on 18, 3, and the northeast quarter of the southwest quarter of section 21. I saw them January 14th, 1887.

Q. What was its condition at that time as to being wild and uncultivated or otherwise?

A. It was wild land, uncultivated, in a state of nature. I examined the northwest quarter of the southeast quarter of section 22, 18, 3, January 7, 8 and 13. The whole section on that description was done between those dates in 1887.

Q. What was the condition of those lands as to being wild and uncultivated at that time?

A. Entirely wild land, no disturbance, no chopping, nothing of that kind. I saw the northwest quarter of the northwest quarter of section 28, 18, 3, January 16 and 17, 1887.

Q. What was their condition at that time? A. Entirely wild, the same as the rest.

Q. What was the value of these lands in your judgment?

A. The value of them and the timber?

Q. Yes, sir, as they were situated at that time.

A. Well, I could not tell you.

Q. Were they worth \$2,000 and over?

A. Why, yes, I can remember that much.

Cross-examination by Mr. HANCHETT:

The value consisted in the timber; it was pine timber, hardwood and hemlock; I could not tell how much pine timber was on the land without going to my report; the most valuable timber was the pine; the hardwood didn't amount to anything; the hard timber was beech and maple, soft elm and basswood, and such as are common in hardwood lands; that would comprise the different varieties of timber I found on this land. Some of the land didn't

have all the timber. Some of them had one kind and son another; speaking generally, those were the kinds of timb on the land; the value was in the timber and not in the lan itself; some of the land was second-class farming land; the may value was in the timber I found on them; I don't remember of an road on these lands; I had made diagrams of all this land, and the roads are all marked, and there are no roads on my diagram having refreshed my memory from the diagrams, I can say the were not any roads on these lands; they were lumbering on adjoing sections, and in that same township there has been a good de of lumbering; I do not remember particularly about the east had of the southwest of one, 18, 4. It is quite a while since I have been there; it is not far from Harrison, right in that old lumbering ditrict there.

Q. What I want is to direct your attention particularly to the fact: Hadn't the work of cutting roads on that 80 been begun when you were there in January, 1887? Were not men at work on the

80 cutting roads?

A. I don't hardly think it, but there was some lumbering goin on a little ways east of there. I was there examining that 80. didn't come across men known as the Rust men, working ther There was no Rust men working around that country, but there were other names.

Q. Were not there some men cutting roads on that land, an didn't they inquire of you what you were looking the land over for

Don't you remember that circumstance?

A. Well, sir, there was men somewheres in there, but I would not tell what part of it. We met some men in there cutting roads. I was up on a rolling piece of ground, and I just recollect there was some men in there, and I could think of their names after a littly while.

Q. Around there on the east half of the southwest of one, 18, 4

A. I could not tell you that.

Q. Then that may have occurred?

A. Well, I would not say anything like that. I would not dark say that. But I met men in a good many places in the country there. I heard the name of McTavosh somewhere

I saw two or three groups of men in that country, and I don't remember if there was anything going on on that land. If there was anything going on on that land I would have mentioned it. The whole surface and the shape and everything is all on my books.

Q. Well, I don't care for your report, except so far as it refreshes your recollection. You remember the circumstance at one time of

a man being there with men cutting a road?

A. No, sir, not on that description. I met men right in that country, though. Somewhere up there I was inquired of why I was looking at the land, a number of times. When that inquiry was made I was on rolling land, dry land, where parties were cutting a road. They were lumbering there, but not on this description. I would not locate where it was.

Q. Will you say that did not occur on the east half of southwest of 1?

A. I will say I don't remember that occurring on that description. If it did I should have made a memorandum of it.

Q. Do you say it didn't?

A. Yes, I would say it didn't, of course.

And for the purpose of showing jurisdiction and conflict between Federal grants, plaintiff's counsel then read in evidence the following patent of the United States:

EXHIBIT 37

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come, Greeting:

Certificate No. 20833.

Whereas, William A. Rust, of Saginaw county, Michigan, has deposited in the General Land Office of the United States a certificate of the register of the land office at Ionia, Michigan, 72

whereby it appears that full payment has been made by the said William A. Rust according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the southeast quarter of the southeast quarter of section twenty, in township eighteen north, of range three west, in the district of lands, subject to sale at Ionia, Michigan, containing forty acres, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said William A. Rust:

Now, know ye that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said William A. Rust, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the

said William A. Rust and to his heirs and assigns forever.

In testimony whereof, I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made patent, and

the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the tenth day of May, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States the ninetyfourth.

By the President:

SEAL.

U. S. GRANT, By CHARLES WHITE, Secretary. J. N. GRANGER. Recorder of the General Land Office.

Recorded in vol. 38, page 138.

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And for the same purpose:

EXHIBIT 38.

65108.

THE UNITED STATES OF AMERICA.

To all - whom these presents shall come, Greeting:

Certificate No. 20836.

Whereas, William A. Rust, of Saginaw, Michigan, has deposited in the General Land Office of the United States a certificate of the register of the land office at Ionia Michigan, whereby it appears that full payment has been made by the said William A. Rust, according to the provisions of the act of Congress of the 24th of April, 1820, entitled, "An act making further provision for the sale of the public lands," for the northwest quarter of the southwest quarter of section twenty-one, in township eighteen north, of range three west, in the district of lands, subject to sale at Ionia, Michigan, containing forty acres, according to the official plat of the survey of the said lands, returned to the General Land Office by the surveyor general, which said tract has been purchased by the said William A. Rust.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress, in such case made and provided, have given and granted, and by these presents do give and grant, unto the said William A. Rust, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature, thereunto belonging, unto the

said William A. Rust, and to his heirs and assigns forever.

In testimony whereof, I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed. Given under my hand, at the city of Washington, the 74

tenth day of May, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States the ninety-fourth.

By the President:

SEAL.

U. S. GRANT, By CHARLES WHITE, Secretary. J. N. GRANGER,

Recorder of the General Land Office.

Recorded, voi. 38, page 141.

And for the same purpose read

Ехнівіт 39.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come, Greeting :

Certificate No. 20871.

Whereas, William A. Rust, of Saginaw county, Michigan, has deposited in the General Land Office of the United States a certificate of the register of the land office at Ionia, Michigan, whereby it appears that full payment has been made by the said William A. Rust, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the northwest quarter of the southeast quarter of section twenty-two, in township eighteen north, of range three west, in the district of lands, subject to sale at Ionia, Michigan, containing forty acres, according to the official plat of the survey of said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said William A. Rust.

Now, know ye that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and

granted, and by these presents do give and grant, unto the said William A. Rust, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging unto the said William A. Rust, and to his heirs and assigns, forever.

In testimony whereof, I, Ulysses S. Grant, President of United States of America, have caused these letters to be made patent, and

the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the tenth day of May, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States the ninetyfourth.

By the President:

SEAL.

U. S. GRANT,

By CHARLES WHITE, Secretary.

J. N. GRANGER,

Recorder of the General Land Office.

Recorded vol. 38, page 176.

And for the same purpose read

Ехнівіт 40.

65108.

Certificate No. 20872.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come, Greeting:

Whereas, William A. Rust, of Saginaw county, Michigan, has deposited in the General Land Office of the United States a certificate of the register of the land office at Ionia, Michigan, whereby it appears that full payment has been made by the said William

A. Rust, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the northwest quarter of

the northwest quarter of section twenty-eight, in township eighteen north, of range three west, in the district of lands subject to sale at Ionia, Michigan, containing forty acres, according to the official plat of the survey of the said lands, returned to the General Land Office by the surveyor general, which said tract has been purchased by the said William A. Rust.

Now know ye that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said William A. Rust, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature thereunto belonging, unto the said William A. Rust, and to his heirs and assigns forever.

In testimony whereof, I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made patent, and

the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the tenth day of May, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States the ninetyfourth.

By the President:

[L. S.]

U. S. GRANT,
By CHARLES WHITE, Secretary.
J. N. GRANGER,
Recorder of the General Land Office.

Recorded vol. 38, page 177.

And for the same purpose, plaintiff's counsel read Exhibit 77 41, a quitclaim deed from William A. Rust, dated January 15th, 1870, to John F. Rust, David W. Rust and Aloney Rust, for the land described in the foregoing patents with other lands, which deed was duly recorded in 1871; also Exhibit No. 42, being a decree in partition, dated June 24th, 1878, made between David W. Rust, John F. Rust and heirs of Aloney Rust, in which there was set over to David W. Rust the lands in the foregoing patent, which decree was duly recorded in 1879; also Exhibit 43, a quitclaim deed, dated Oct. 3rd, 1878, from David W. Rust and wife to John F. Rust, of an undivided one-half of the premises described in the foregoing patent on sections twenty-two (22) and twenty-eight (28), which deed was duly recorded in 1879; also Exhibit No. 44, being a quitclaim deed from David W. Rust and wife to John F. Rust, bearing date January 20th, 1879, conveying to John F. Rust an undivided one-half interest in the lands in sections twenty (20) and twenty-one (21), duly recorded in 1879; also Exhibit 45, being a warranty deed, dated August 13th, 1879, from David W. Rust and wife and John F. Rust and wife to George Rust, conveying an equal undivided one-third interest in the lands covered by the foregoing patents, duly recorded in 1879; also Exhibit 46, being a warranty deed, dated September 28th, 1881, from George Rust and wife to John F. Rust, of an undivided one-third interest in the lands in

controversy, recorded in 1881; also Exhibit 47, being a warranty deed from Laura Rust, John F. Rust and wife, Florence M. Rust, George Rust and wife, to Amasa Rust and Charles A. Rust, of an undivided three-twelfths interest in the lands in controversy, duly recorded in 1881; also Exhibit 48, dated October 28th, 1881, being a deed made by David W. Rust, Jr., by Laura Rust as special guardian, in pursuance of an order of the circuit court for the county of Saginaw, in chancery, to Amasa Rust and Charles A. Rust, of an undivided one-twelfth interest in the lands in contro-

versy, duly recorded in 1881; also Exhibit 50, being a quitclaim deed from John E Rust and wife to Amasa Rust and Charles A. Rust, of an undivided one-sixth interest in the

lands in controversy, recorded in 1882.

And for the same purpose read

Ехнівіт 51.

Certificate No. 19223.

THE UNITED STATES OF AMERICA.

To all — whom these presents shall come, Greeting:

Whereas, Addison P. Brewer, of Saginaw county, Michigan, has deposited in the General Land Office of the United States a certificate of the register of the land office at Ionia, Michigan, whereby it appears that full payment has been made by the said Addison P. Brewer, according to provisions of the act of Congress of the 24th day of April, 1820, entitled "An act making further provision for the sale of the public lands," for the north half of the northeast quarter of section thirty-five, in township eighteen north, of range three west, in the district of lands subject to sale at Ionia, Michigan, containing eighty acres, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Addison P. Brewer.

Now know ye, that the United States of America, in consideration of the premises and in conformity with the several acts of Congress, in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Addison P. Brewer, and to his heirs, the said tract above described.

To have and to hold the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature thereunto belonging, unto the said Addison P. Brewer, and to his heirs

and assigns forever.

79 In testimony whereof, I, Andrew Johnson, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington the tenth day of January, in the year of our Lord one thousand eight hundred and sixty-seven, and of the Independence of the United States the

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ninety-first. By the President:

ANDREW JOHNSON, By E. A. NEILL, Secretary. J. N. GRANGER, Recorder of the General Land Office.

Recorded, vol. 35, page 495.

Plaintiff's counsel then read in evidence for the same purpose. Exhibit 52, being a quitclaim deed, dated February 21, 1870, from Addison P. Brewer and wife to Jesse Hoyt, conveying an undivided three-fourths interest in the lands described in Exhibit 51; also Exhibit 53, being a special covenant deed from Addison P. Brewer and wife to Jesse Hoyt, of an undivided one-fourth interest in the lands described in Exhibit 51; also Exhibit 55, being a special covenant deed from Jesse Hoyt and wife to David W. Rust, of an undivided one-fourth of the lands described in Exhibit 51; and Exhibit 56, being a warranty deed from David W. Rust and wife to George Rust, of an undivided two-thirds of the land described in Exhibit 51, the title of an undivided one-third of which passed into Amasa Rust and Charles A. Rust by conveyances already put in evidence.

Plaintiff here rested.

The defendants, by their counsel, then offered testimony to sustain the issue on their part, the following: A letter and its inclosures upon the subject of defective surveys; to which counsel

for plaintiff objected as immaterial and irrelevant, which objection was overruled by the court, and exception taken thereto for the plaintiff, and the same was then read in evidence as

EXHIBIT 57.

EXECUTIVE OFFICE, DETROIT, February 3, 1842.

To the President of the United States.

SIR: In pursuance of the instruction of the legislature of this State, I have the honor herewith to send you a joint resolution in relation to the resurvey of certain townships of land therein mentioned.

I have the honor to be your most ob'd't serv't,

JNO. S. BARRY.

Endorsed: "Referred by Pres't of U. S."

"Reported to the Pres't Feb. 17, 1842. W. T. S."

"Answered Feb. 21, 1842. W. T. S."

The resolution inclosed in the foregoing is as follows:

(No. 3.)

Laws of Michigan, 1842.

(No. 8.)

Joint resolutions requesting the President of the United States to cause the survey of certain townships of land.

Whereas, it has been satisfactorily made to appear to this legislature that large districts of lands lying within the limits of the State of Michigan have been returned by some of the deputy United States surveyors to the General Land Office as surveyed, where no surveys whatever have been made, or where the surveys have been so imperfectly done as to be utterly valueless; and whereas, the

United States surveyor general of this land district has caused the lands so represented as surveyed to be offered for sale, to the very great injury of the State of Michigan and the citizens

thereof; therefore.

Be it resolved by the senate and house of representatives of the State of

Michigan:

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That the President of the United States be requested to cause the subdivisions of the following townships of land, situate within the State of Michigan, and which have been represented to have been surveyed, but which have either not been surveyed or have been so imperfectly surveyed that said work is valueless, to be surveyed at

as early a day as may be consistent, viz:

Towns sixteen and seventeen north, of range three east, and towns fifteen, sixteen and seventeen north, of range four east, and all the towns lying east of the principal meridian, from towns eighteen to twenty-five north inclusive, and ranges five, six, seven, eight and nine, east of towns twenty-six north, and also towns sixteen, seventeen and eighteen north, of range six, seven and eight west, including in all, eighty-one whole and fractional townships.

Resolved, That the governor be requested to transmit the foregoing preamble and resolution to the President of the United States.

Approved February 1, 1842.

And after like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 58.

GENERAL LAND OFFICE, February 17, 1842.

Sir: I have the honor to return herewith the letter of the governor of Michigan, bearing date the 3d instant, and its enclosure, a joint resolution of the legislature, alleging the existence of great imperfections in certain surveys of the public lands covering a large

district in that State, and calling upon the President to cause a resurvey to be made of the subdivision lines of a number of townships therein enumerated, amounting to about eighty townships and fractional townships, all of which were referred by

you to this office on the 16th instant.

In reply, I have the honor to enclose herewith a diagram of the State of Michigan, on which the townships in question have been designated by distinctive colors as explained thereon, so as to show when and by whom the surveys were made, and beg leave to state that on a particular examination of the plats of survey and other records of this office, the former appear to be perfectly regular in every respect, and are all duly certified by the surveyor general, and no evidence can be found of the existence of the alleged defects in the surveys, the resolution being the first and only intimation which this office has had on the subject.

The lands, with the exception of one township, appear to have been all offered at public sale, and are now subject to private

entry.

Under all the circumstances, I would respectfully recommend that a copy of the memorial be immediately referred to the surveyor general at Cincinnati for a full report of all the facts which it may be in his power to furnish, on receipt of which an immediate examination of portions of the field-work by one of his most trusted deputies could, if considered expedient, be ordered, and such further steps taken as may be necessary to retrace the original surveys and correct the plats so as not to disturb the titles which may have already or shall have become vested in the purchasers of the lands from the United States according to the original marks on the field; and should this course meet your approbation, on the return of the papers to this office, it will be immediately carried into effect, and the governor of Michigan duly advised thereof.

I am, sir, very respectfully your obedient servant,

E. M. HUNTINGTON,

Commissioner.

To his excellency, John Tyler, President of the United States.

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(Endorsed.)

Let the matter be referred to the surveyor general, with instructions as indicated, and let the governor of Michigan be informed of the measures to be adopted. J. TYLER.

February 18, 1842.

Instructed surveyor general February 21, 1842. Sent copy of instructions to governor of Michigan, February 21, 1842. W. F. A. See surveyor general's report, 4th March, 1842, and Commis-

sioner's instructions, 2d April, 1842.

Also letter of same date to governor. W. T. S.

And on like offer, objection, ruling and exception, defendant's counsel read

EXHIBIT 59

GENERAL LAND OFFICE, February 21, 1842.

Sir: By order of the President, I have the honor to acknowledge the receipt of your communication of the 3d inst., covering a joint resolution of the legislature of the State of Michigan relative to certain surveys of the public lands in said State alleged to be very imperfect and defective, and to enclose a copy of my instructions of this date to the surveyor general at Cincinnati, Ohio, on the subject, which will show the action thus far had in the matter.

I am, sir, very respectfully, your obedient servant,

E. M. HUNTINGTON.

Commissioner.

To his excellency John S. Barry, governor of Michigan, at Detroit.

84 (Copy enclosed is as follows:)

GENERAL LAND OFFICE, February 21, 1842.

SIR: By order of the President, I herewith enclose a copy of the joint resolution of the legislature of the State of Michigan alleging the existence of great imperfections in certain surveys in that State, and calling the President to cause a resurvey to be made of the subdivision lines of a number of townships therein enumerated, amounting in the aggregate to about eighty townships, and fractional townships, and have to request that you will, at your earliest convenience, make a full report of all the facts in your power, in order that such further action may be had thereon as may be deemed expedient for ascertaining the true state of those surveys, and their completion on the field, without disturbing the titles which may have already or shall have become vested in the purchasers of the land from the United States, according to the original marks where such were made, accompanied by any suggestions which may occur to your mind as to the best course to be pursued in making the corrections, and for preventing such neglect of duty in future. Also, whether or not any of the deputies who were engaged on these surveys are at present in the employ of your office. Enclosed is a copy of the diagram which was laid before the President with my report of the 17th, on the subject, showing the position of the surveys in question, by whom and when surveyed, which may be found useful in making the investigation. I likewise enclose the copy of a letter bearing date the 22d of October, 1840, addressed by J. A. Rousseau to Dr. Houghton, geologist of Michigan, the original of which reached this office on the 18th inst., through the Secretary of the Treasury (after my report had gone to the President), with a letter from the Hon. William Woodbridge, and in which you will perceive that Mr. Rousseau (who is one of the deputies charged) acknowledges his surveys to be defective, and not according to your instructions.

85 In case you have not already done so, you will enforce the standing instructions of the 28th of July, 1831, of this office. requiring that "no deputy who has improperly failed to fulfill his engagements, is afterwards to be employed by you," and that "of every such failure you will give notice to the department, and on the receipt of your report, such further steps will be taken in regard to this matter as the facts shall warrant." You will also be expected, in case the errors exist as above alleged, to explain how it has happened that, under your supervision of these deputies for whose omissions and conduct you are held officially responsible to this department, you have suffered such gross impositions to be practiced by them on the United States.

Trusting that you will be able to explain in a satisfactory man-

ner, I am, sir,

Very respectfully, your obedient servant,

E. M. HUNTINGTON. Commissioner.

To Ezekiel S. Haines, Esq., surveyor general, Cincinnati, Ohio.

After like offer, objection, ruling, and exception, defendant's counsel read

Ехнівіт 60.

SURVEYOR GENERAL'S OFFICE. CINCINNATI, March 4, 1842.

SIR: I have to acknowledge the receipt of your communication of the 21st ultimo, enclosing "a copy of the joint resolution of the legislature of the State of Michigan, alleging the existence of great imperfections in certain resurveys in that State, and asking the President to cause a resurvey to be made of the subdivision lines of a number of townships therein mentioned," and calling upon me to make at my "earliest convenience a full report of all the facts in my power in order that such further action may be had thereon as may be deemed expedient," etc. The report called for I now pro-

ceed to make.

In selecting his deputy surveyors, where they are un-86 known to him, the surveyor general must necessarily rely upon the recommendation of known and responsible persons, which in all such cases is required. As it respects their skill in the art of surveying, and their competency to execute their contracts, the surveyor general can generally test the deputies by personal ex-But of their integrity and trustworthiness he must necessarily rely upon the evidence contained in their recommendations. In the case now under consideration the Messrs. Rousseau, who are principally implicated, and who surveyed the lowest portions of the townships complained of, were taken into service by my predecessor in office, on the recommendation of several distinguished gentlemen of Louisville and elsewhere, which recommendations I enclose herewith for your perusal, and which you will be pleased to return to me at your convenience.

On coming into this office in June, 1838, I found their (the Rousseaus) names on the roll of approved deputy surveyors whose work had been acceptable. I had, therefore, no hesitation in continuing them in the service, it being the settled practice of the office to employ the old and experienced deputies in preference to new surveyors. They had but one contract from me, the returns of which (with the exception of some work, chiefly meanders in a few townships, which they afterwards corrected) were found as acceptable as the average returns of the deputies, conforming in all essential particulars with the instructions in force. In applying to their work the usual test of platting and close examination, there was nothing which could lead to the suspicion of defective work or of false re-The rejected work above mentioned, and which was subsequently corrected, was portions of meanders of Lake Huron and Saginaw bay, where, owing to impassable marsh bordering them in many places, or from the quantities of ice driven on shore by the winds and waves, as they stated, it was exceedingly difficult to close the lines out to the margin and to take the meanders. And

the lines out to the margin and to take the meanders. And it is unquestionable that the general character of the country covered by these contracts render- the surveys very difficult.

As above stated, at the time of the platting and examination of the work of the Messrs. Rousseau, there was not the least reason to suspect them of any unfairness or fraud; and it was not until the summer of 1840, after their accounts had been made up, settled, and paid off (except a portion that was garnished in my hands by a creditor of R. H. Rousseau), that any intimation of a fraudulent return was received, at which time I was informed (unofficially) by a respectable deputy surveyor, Mr. John Mullett, that he had received information from Mr. Barton, register of the land office at Genesee, Mich., that affidavits of the fact of the alleged fraud had been lodged with him (Mr. Barton). I immediately had addressed an official letter to Mr. Barton, calling for all the information on the subject in his possession, a copy of which, dated July 30, 1840, marked A, is herewith transmitted. On the 3d of September following, having received no reply from Mr. Barton, I wrote him again, urging the immediate transmission to me of the information called for (see copy marked B). After waiting until the 26th of the same month and receiving no answer from Mr. Barton, I addressed to him the letter of that date (see copy marked C). I would here remark that the letter mentioned in that to Mr. Barton, was addressed (confidentially) to the chief clerk, in reply to one written at my request, but did not show in whose work or in what district the alleged frauds existed, but referred us to Mr. Barton. an extract from this letter which was sent to J. A. Rousseau, and which is referred to by him in his communication of the 22d of October, 1840, to Dr. Houghton, of Detroit, of which a copy accompanied vour communication now before me. It may be proper to add that the letter to the chief clerk was not from Dr. Houghton, as Mr. Rousseau supposed.

On the 11th of November, my several letters to Mr. Barton re-

maining unanswered, I again called his attention to the subject of them in a postcript to a letter addressed to him under that date (see copy marked D), and with no better success.

Having failed to elicit any information from Mr. Barton, which I considered he, as a public officer connected directly with these lands, was bound to give me, I doubted whether any such affidavits or information of an authentic character had really been received And my doubts on the subject were strengthened by the receipt of two communications from Mr. Rousseau's chainmen (R. McManners and A. Kress), dated October 28 and November 14. 1840 (see copies marked E and F). It was from these men, it seems, that the information in the possession of Mr. Barton, of whatever nature it may be, was obtained. And their letters will show how little reliance could be placed upon their testimony on either side. I sought information also from the other deputies, particularly those whose work adjoined that of the Rousseaus, respecting the character of their (the Rousseaus) surveys, but found that nothing objectionable in it had been seen by them. I likewise made inquiry of one or two other of their hands who were at this office, but obtained no knowledge of anything wrong in the work. All efforts to arrive at some certain or authentic knowledge of fraud having been committed by these men, I did not deem myself justifiable in withholding any longer the balance due them.

The deputy surveyors are a hard-working body of men, earn but little (if they do their duty), and endure great hardships. It has been my practice to pay them as soon as their work has been examined, platted, and approved; and it is with pride and satisfaction that I can say that not one has been delayed a day for want of his

just earnings.

The townships of Mr. Gist's district, except township 26, range 9 E, were surveyed and returned by the Messrs. Rousseau, by my consent, under the original contract entered into by Mr. Gist, and long before there was any suspicion of dishonesty in the work of the Rousseaus.

Your communication conveys to me the first intimation of any defect or inaccuracy in the work of Mr. Coon. This was his first district of public surveying. He came strongly recommended as an able and experienced practical surveyor, and worthy of all confidence. I cannot but hope that there is some mistake about the three townships in his contract.

The district of Mr. Riley has not been before complained of either, until the receipt of your communication. He was on the roll of approved deputies when I came into office, and I had no rea-

son to doubt his honesty and capacity.

None of the deputies whose work is here complained of are now in the service, nor will they or either of them be hereafter employed by me. Of this I will give you the proper notice in a separate communication, under the standing instructions of 28th July, 1831.

On the receipt of a report from me on the subject of these surveys, you propose to take such further action concerning them as may be

deemed expedient for ascertaining their true state, and ask any suggestions which may occur to my mind as to the best course to be pursued in making the corrections, and for preventing such neglect

of duty in the future.

I would respectfully suggest, then, that an experienced deputy surveyor, say Mr. William A. Burt or Mr. John Mullett, be employed to go on the ground and examine each township (or a sufficient number of them in each district to satisfy himself concerning the whole), and ascertain and report the exact condition of the surveys in each. And if it shall be found that the surveys in the townships indicated, or any of them, are defective in the field-work, then new surveys in all such cases should be made at the expense of the contractor or his securities.

The concluding paragraph of your communication requires me "in case the errors exist as above alleged, to explain how it has happened that under 'my' supervision of these deputies, for whose omissions and conduct "I am "held officially responsible to the department," I "have suffered such gross imposition to be practiced

by them on the United States."

90 I will explain to you then, how it may happen that impositions may be practiced by dishonest surveyors, without the possibility of detection from the examination of their returns.

The exterior boundaries of the townships are generally surveyed before their subdivision into sections is put under contract. It is usual to furnish each surveyor contracting for such subdivisions with a small map or diagram of his district, showing the length of each township line, the variation of the compass by which it was run, and the principal streams and lakes thereon, with a table of the bearing trees at each section corner, so that in case any original post may be gone, he can replace it in its true position. The surveyor proposing to commit a fraud by making return of fieldnotes where he has made no survey, in order to avoid the risk of detection, whether he has a diagram of his district or not, must at least pass along each of his township boundary lines, and carefully note the crossing of all streams, lakes, swamps, &c., thereon. sould probably then draw up a fictitious map of each township, laying down thereon streams, lakes, swamps, &c., carefully connecting them with those on the township lines, and by conforming the whole to what might be expected from the general character of the country, to give his maps the appearance of reality. With one of these imaginary maps of a township before him, the surveyor, with ordinary ingenuity, may make up a set of fictitious field-notes, in the regular order of subdivision, keeping probability always in view, as to length of lines, sight trees, bearing trees at the corners, the streams with their course and width, lakes, swamps, &c., with meanders of navigable waters and lakes, so constructed by previous platting as to make them close well. His field-notes of each township being thus carefully manufactured, bearing all the marks of genuineness, with the usual certificate signed by himself and his chainmen and markers, conforming apparently in every particular to the general instructions, and every precaution taken to give his

work, and all the circumstances connected with it, the appearance of reality, he makes his returns into the office of the surveyor general. His field-notes are then put into the hands of the draughtsmen, who therefrom prepare the township maps, by careful platting and close examination of the notes. His maps and field-notes agreeing with the previous survey of the exterior lines, his meanders closing well, the whole work presenting the appearance of genuineness, the survey is approved and accepted as a matter of course.

It will be borne in mind that the surveyor general cannot be expected to make personal examination of the field-work; that the deputy is a sworn officer; that his chainmen and markers are sworn assistants; that he is under contract, with security in double the amount of his work; that his skill and competency as a surveyor have been previously ascertained, and his character for integrity and faithfulness has been amply vouched for by the recommendations of known and responsible men. How, then, in such a case as I have here presented, can the surveyor general detect the fraud?

Impositions of this kind have, in several instances, been practiced on my predecessors, without detection; upon Surveyor General Mansfield, some thirty-five years ago, in the Cincinnati land district; upon Surveyor General Tiffin, about twenty years ago, in the Lima district; and upon Surveyor General Lytle (the elder), about twenty years ago, in the Fort Wayne district. Some instances of the same kind. I believe, have occurred with the surveyor general of other districts. I mention these cases to show the possibility of such frauds escaping detection, notwithstanding all the vigilance which may be exercised.

It has been the uniform practice of this office, both since I have had charge of it and (as I learn) before, to subject the returns of the deputy surveyors to the most careful and rigid examination, and to guard the public interests by all the means in its power. And it has very often happened that offense has been given to deputy

surveyors by the rejection of a part of their work, which has 92 obliged them to return to their districts to correct, as in case of Thomas Cox, of Iowa, which was lately before you, who when part of his survey was rejected, became much excited, insisting strenuously that his work was right, and that he had been engaged in the public surveys under several surveyors general for thirty years, and never had his work objected to before. It has never before, I believe, been alleged that erroneous or fraudulent returns of surveys have been admitted or escaped detection through remissness of duty or want of vigilance in this office, and it is worthy of remark that to this day none of the public officers of Michigan have advised this office of any defective or fraudulent surveys therein, nor has any complaint been made to me of neglect on the part of any of my deputies. And I am even yet ignorant of the nature of the alleged omissions or inaccuracies, and cannot but indulge the hope that the allegations (except, possibly, to a very limited extent) may, in the end, be found unsustained in fact. To show that there is some ground for this hope, I beg

leave to refer you to the enclosed extract of a letter addressed to me by S. W. Higgins, Esq., State topographer of Michigan, on the

18th November, 1839, marked G.

In the cases now under consideration, the Messrs. Rousseau were out on or in the vicinity of their contracts, ample time to have made a complete survey of every township returned by them. They sent to this office from time to time the notes of a few townships, and drew on me for money to pay, as they said, their assistants and to purchase provisions, as had been the usual practice; and as their returns came in they were platted, and whenever any inaccuracy was found in their work, it was immediately notified to them for correction, which they attended to.

For the general accuracy and character of the work done in this office, in relation to the public surveys, I request you to refer to Mr. John M. Moore, your chief clerk, and to Samuel D. King, your special agent for the examination of the surveyor general's offices, who are both well acquainted with the business done in this office.

You invite my suggestions as to the best mode of detecting fraudulent work by the deputies, and for preventing them in future. It has long been deemed in this office necessary that some more effectual method should be adopted for detecting errors or frauds in the field. In the summer of 1840, when Mr. Whitcomb, your predecessor in office, was on a visit to this city, I conversed with him particularly on this subject, and recommended that provision should be made for enabling the surveyor general to employ a confidential agent or agents to inspect on the ground, promiseuously, portions at least of the field-work of every deputy, and examine into its correctness so far as to assure himself or themselves that the work was faithfully executed according to law and the general instructions, and to report its true condition to the surveyor general. In this suggestion Mr. Whitcomb fully concurred. The knowledge that such examinations are to be made (the times and places of examination being unknown to the deputy) would, I think, be a great security for a faithful execution of his work.

As a still more effectual safeguard against fraudulent work and false returns by the deputies, I recommen I that such frauds be made by law a criminal offense, subjecting the delinquent to severe becaming penalties and to confinement in a penitentiary or State orison. Such provision may perhaps now be in force under existing laws, as suggested by the Commissioner of the General Land of the macommunication to the surveyor general of Mississippi, dated March 18, 1829 (see Public Land Laws, part 2d, page 894). Should to evour opinion that such provision does now exist, in the event of its being ascertained from examination in the field that all or either of the deputies now charged with false returns or fraudulent work are guilty of the charge, I would respectfully recommend that criminal prosecution be instituted against them for a violation of heir oath of office, as suggested in the passage above referred to.

I should have mentioned in the proper place that this subject was particularly recommended to Mr. Samuel D. King, your special agent, when examining this office in August last, and 10-331

the suggestions met with his entire concurrence, and will doubt-

less be embraced in his report.

With this report I transmit copies of such part of the correspondence of this office as have a bearing upon the subjects thereof, and not hereinbefore referred to. They are as follows:

H, I, K, relate to erroneous and defective work in old surveys. L, M, N, relate to portions of the Rousseaus' work rejected.

O. P. Extracts from official instructions.

Q. Urgent demand of R. H. Rousseau for the balance of his account, garnisheed.

Very respectfully, sir, your obedient servant

E. S. HAINES, Surveyor General.

Hon. E. M. Huntington, Com'r Gen'l Land Office, Washington.

Endorsed—Briefed:

"Acknowledged, March 17, 1842. W. T. S." "See instructions of 1, 2, 1842, for retracing."

"Also letter of same date to governor of Michigan. W. T. S."

"Received March 11, 1842."

After like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 61.

GENERAL LAND OFFICE, April 2, 1842.

Sir: With my communication of the 21st of February last I had the honor to transmit a copy of my instructions of same date to the surveyor general at Cincinnati on the subject of alleged defective surveys of the public lands north of the Saginaw bay, in, the State of Michigan. I now have the honor to state that a full re-

port has since been received from the surveyor general on the subject, and to enclose for your information a copy of my 95 instructions to him of this date, issued in consequence thereof.

I am, sir, very respectfully, your obedient servant, E. M. HUNTINGTON,

Commissioner.

To his excellency, John S. Barry, governor of Michigan, at Detroit.

(The following is copy of paper enclosed:)

General Land Office, April 2, 1842.

SIR: In reply to the suggestion made in your report to this office of the 4th ultimo, on the subject of the alleged errors and omissions in the surveys of the public lands north of Saginaw bay, Michigan, "that an experienced deputy surveyor be employed to go on the ground and examine each township (or a sufficient number of them) in each district, to satisfy himself concerning the whole, and ascer-

tain and report the exact conditions of the surveys in each; and if it shall be found that the surveys in the townships indicated, or any of them, are defective in the field-work, then new surveys in all such cases should be made at the expense of the contractor or his securities," I have to state that your recommendation is approved, and to request that you will, at your earliest convenience, take the proper steps to carry it into effect. As these lands have already been put into market, a part of them sold, and the balance remain subject to private entry, you will be particularly careful in your instructions to the deputy to prevent any departure from the original marks made on the ground in the existing surveys, which would disturb the titles acquired by purchasers, and the amended fieldnotes should show, by references to such marks, that they have been found and adopted; or, if not found, and there is sufficient evidence that no corner was made in the original survey, the facts in such cases should be noted, as also the mode in which such corners were

restored or re-established. You will likewise report to this 96 office during the progress of the examinations of such townships, and parts of townships, as it may be advisable to withdraw from market until corrected plats can be furnished. As regards the other matters contained in your report, they will be considered

in proper time or when called up.

I am, sir, very respectfully, your obedient servant, E. M. HUNTINGTON.

Commissioner.

And after like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 62.

(Instructions of Wm. A. Burt.)

SURVEYOR GENERAL'S OFFICE, CINCINNATI, April 11, 1842.

Sir: On Saturday (9th) I transmitted to you a copy of a communication just received from the Commissioner of the General Land Office, instructing me to cause examination to be made into the character of certain surveys east of the meridian, Michigan.

I have now to call your attention to the subject for the purpose of furnishing you with the necessary instructions in relation to the

examination to be made.

On the 1st of February last, it appears a "joint resolution" was passed by the legislature of Michigan, calling upon the President of the United States to cause certain townships therein enumerated to be surveyed, which townships the resolution represents as "either not surveyed, or have been so imperfectly surveyed that said work is valueless." This resolution was referred to the Commissioner of the General Land Office by the President, and a copy thereof enclosed to me with the Commissioner's letter of the 21st February last, copies of both of which I herewith transmit to you. In my report to the Commissioner on this subject, I showed him the pre-

caution which was constantly used to prevent loose, defective 97 or fraudulent work, and the rigid scrutiny to which the work of the surveyors is subjected in this office in the examination of their work, and pointing out to him at the same time the possibility of a deputy practicing a fraud upon the office, such as that alleged, by making up a set of false field-notes so ingeniously constructed as to escape the closest examination. Commissioner likewise, that having been informed by one of the Michigan deputies (confidentially) that some depositions alleging fraudulent work had been lodged with the register of the land office at Genesee, I had written repeatedly and urgently to the register for copies of the depositions, if any such be had, or some authentic information concerning the alleged frauds, that I might take the proper steps to ascertain the facts in the case. All my efforts to get the desired information from the register failed, as he never made any reply, and I could get no clue from any other source to the alleged frauds which would justify me in instituting examinations. And so the matter rested until brought up in the manner above re-

It is very probable, from the respectable source whence the information now obtained emanates, that fraud to a greater or less extent has been practiced on the office and on the public interests, and, of course, false returns made. To ascertain whether this be a fact, and to what extent those frauds exist, is the object for which I now commission you. I have to request, therefore, that you will repair to the townships specified in the joint resolution (or so many of them as you can visit, or as may be sufficient to form a fair opinion as to the others), and by actual examination and inspection on the ground ascertain the true state of the surveys which the sections purport to have been made in those townships. Whether it will be necessary for you to take your compass and chain you can judge for yourself. It may, in some cases at least, be found expedient, where lines have been run, to examine the course and measurement of them, and compare the state of the work with the field-notes of the townships

where copies are now furnished.

98 You will please make full notes of your examination, describing the actual state of the work in each township separately, and in accordance with the intention of the Commissioner's instructions herewith. As often as practicable, without inconvenience, you will please report to me your progress, with the result of your examinations. There are three townships in Mr. Coon's district (Tp 25, Rs 1, 2 & 3 E), included in the list by the Michigan legislature. If possible, you will please examine them, in whole or in part, as I think it probable they are named in mistake for R. H.

I transmit to you copies of the field-notes of 24 townships of those referred to, to wit, Ts 21, 22, R 1 E; T 16, R 3 E; Ts 16, 17, 18, 23, $R\ 4: Ts\ 16, 17, 18, 20, 23, 24, 25, R\ 5:\ Ts\ 19, 20, 21, 22, R\ 6: Ts\ 20, 21, 22,$ 22, 23, R 7; T 22, R 8; T 22, R 9, in seven packages, all postage paid. These are copies which the deputies had sent in before their work

was completed, the originals being on file here. You will please return them to this office, as they may be needed again.

A reasonable compensation will be paid to you for your services, including your necessary expenses, on the completion of your

labors.

You will please call upon the register of the land office at Genesee for a list of the sales of public lands in the townships specified in the legislative resolution; and have reference to these tracts, as far as practicable, in your examinations and your report.

Very respectfully, sir, your ob't serv't,

E. S. HAINES, Sur. Gen'l.

William A. Burt, Esq., dep. sur., Mt. Vernon, Mich.

Copy sent to Hon. A. S. Porter, U. S. Senate, 10 Jan'y 1844. S. N.

99 After like offer, objection, ruling, and exception, defendant's counsel read

Ехнівіт 63.

Surveyor General's Office, Cincinnati, August 1, 1842.

Six: On the receipt of your instructions of April 2 ultimo, my predecessor dispatched an old and experienced deputy surveyor (William A. Burt of Michigan) to examine by personal inspection on the ground into the actual condition of the surveys north and west of Saginaw bay, in Michigan, as directed by you.

Mr. Burt has executed the trust assigned to him, and made his report to this office, and I herewith transmit to you a copy thereof, together with a copy of the surveyor general's instructions to him.

The report of Mr. Burt, you will see, furnishes abundant proof that the surveys examined by him are grossly defective and fraudulent, and there is a high probability that the remaining townships in the same contracts, not examined by Mr. Burt, are as defective as those which he inspected.

Having reported to you the facts in the case for your consideration, I shall await your instructions before taking any further steps

in the matter.

Very respectfully, sir, your obedient servant,

WILLIAM JOHNSON, Surveyor General.

Hon. Thomas H. Blake, Comm'r Gen'l Land Office, Washington.

100 And after like offer, objection, ruling, and exception, defendant's counsel read

Ехнівіт 64.

GENERAL LAND OFFICE, October 4, 1842.

Hon. A. S. Porter, Detroit, Mich.

SIR: I have the honor to acknowledge the receipt of your communication of the 26th ulto. on the subject of the defective surveys

north of Saginaw bay, in the State of Michigan.

In reply, I have to state that a report bearing date the 1st of August last has been received at this office from the present surveyor general at Cincinnati, covering a copy of the report of the deputy surveyor who was appointed to examine the condition of the surveys in question on the field, as authorized by the instructions of this office of the 2d of April last; from all which it appearing that the surveys as far as examined were found grossly defective and fraudulent, it is designed to issue instructions from this office for the necessary resurveys in a few days, or so soon as the proper maps now preparing to accompany them shall be completed, when steps will likewise be taken for the prosecution of the delinquent deputies and their securities.

I am, sir, very resp'y, your ob't serv't,

THOS. H. BLAKE, Com'r.

On like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 65.

SURVEYOR GENERAL'S OFFICE. CINCINNATI, April 27, 1843.

SIR: I have to acknowledge the receipt of your communication of the 18th inst., with its enclosures, in relation to the defective and erroneous surveys situate north and west of Saginaw bay, instructing me to take immediate measures "to cause the surveys and marks to be corrected and completed," confining our "operations in the field to the lines actually necessary for that purpose," and advising me that the sum of \$4,000 has

been set apart for that object.

It is shown by Mr. Burt's report that in the townships examined , by him, a very small portion (if any) of the lines had been surveyed or marked; and what was found to have been done, was so erroneous and defective that little or none of it can be relied upon, but nearly all will have to be resurveyed and marked. The sum appropriated for the purpose will not, therefore, defray the expense of surveying more than about one-third of the number of townships embraced in your order, allowing \$2.75 per mile (the usual price) for every mile actually run and marked.

In this state of the case, I infer it to be your intention to limit the expenditure under your order to the sum named in your communication, and shall therefore restrict the contracts to that amount, embracing the townships nearest to the coast, which will be more

salable than those in the interior.

If this course should not be approved by you, I will thank you to apprise me thereof, early. Notice has been given this day to three of the most experienced deputy surveyors in Michigan to be in readiness to take the field so soon as their instruction and other papers can be made out and forwarded to them.

Very respectfully, your ob't serv't,

WILLIAM JOHNSON,

Surveyor General, By SAM'L WILLIAMS, Chif Cl'k.

Hon. Thomas H. Blake, Com'r Gen'l Land Office, Washington.

P. S.—The surveyor general will be absent from the city for a few days.

S. W

Answered May 3, 1843. W. T. S. Steiger, May 2, 1843.

102 On like offer, objection, ruling and exception, defendant's counsel read Extracts from the report of the Commissioner of the General Land

Office and the surveyor general for 1843.

With reference to the published reports of the General Land Office, the State land office and governor's messages, the entire reports and documents are considered as in evidence, but the parties have selected portions thereof to be printed in this record, not intending thereby to be deprived of the privilege of referring to the entire documents, should such a course seem desirable.

EXHIBIT 66

Report for the Year 1843,

Being House Document No. 37, Twenty-eighth Congress, first

Page 52 (from surveyor general's report):

"In Michigan, the surveys ordered by your instruction of the 18th of April last, namely, the correction and completion of the defective surveys in certain townships enumerated by you, north and west of Saginaw bay, were committed to three deputies of much skill and experience."

And on page 53:

"I suppose it to be the intention of the Government to complete the resurveys already begun in Michigan, north and west of Saginaw bay, which are the subject of your instruction of the 18th of April last. I present an estimate, therefore, embracing a sum equal to the expense of an entire resurvey, as it is probable, from

the best information received, that no part of the subdivisions actual or pretended, in the townships referred to can be made available."

"Accompanying this report, I transmit to you the usual estimates, together with those called for by your circular of the 18th of August, and your instruction of the 4th ultimo. to wit:"

103 A.

Estimate of the amount of disbursements for surveying the public lands and for contingent expenses at the office of the surveyor general at Cincinnati for the fiscal year ending the 30th of June, 1845.

"For resurveying erroneous and defective surveys north and west of Saginaw bay, Michigan...... \$10,400"

After like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 67.

Springwells (Near Detroit), September 16, 1844.

Thos. H. Blake, Esq., Com'r Gen'l Land Office.

SIR: While the appropriation bill still remained still unacted upon in the Senate, during its last session, I had the pleasure of repeated and long conversations with a gentleman of the Gen'l Land Office, of superior intelligence, and who possessed, I thought, most deservedly, your entire confidence, relative to the ruinous tendency upon the public surveys of that bill as it passed the House. Being entirely persuaded that very great injustice had been done to Michigan in the appointment of the yearly appropriations for surveys, and that habitually, and for several years past, my intention was to induce such amendment to be made in the appropriation bill as would specifically designate a proper proportion of the aggregate amount appropriated to be expended in surveys here. The fair and liberal views expressed to me by Mr. Wilson, however, and the assurances he gave me that liberal justice would be done to Michigan ir that regard, relieved me from all inquietude I had felt before, in that matter, and I applied all my efforts to secure such increase in the amount of the appropriation (so greatly cut down below the estimates in the House) as you

desired, and as the public interests most manifestly demanded. Of the results of those efforts, and doubtless of other causes and other just views on the subject of Mr. Senator Evans, you are fully aware, and I confidentially say that it was as well the expectation of Mr. Evans (to whom I communicated the views of Mr. Wilson, which I supposed were your views also), as it certainly was mine, that the surveys in Michigan would be forthwith recommenced, and at least that all these erroneous surveys which had been made the subject of so much complaint here, and which were and are leading to such interminable mischief, would

have been immediately attended to. In the township of Salem, Washtenaw county, the last census exhibits, I think, full 1,600 actual residents, and yet the public surveys there were either never completed, or so very wretchedly done by Mr. Wamples, that the people there are "all by the ears." They had applied to Congress for relief, but having the positive assurance that that matter should be immediately acted upon by you, and that an effort by resurvey would be made to accommodate and remove their embarrassments, I introduced no bill, and made on the part of the land comm'r no report. I have been again applied to by those residents, since my return, and all I could say to them was to reiterate what I had written to them immediately after my conversation with Mr. Wilson, that I had such assurances from the Gen'l Land Office as that I could not doubt but their hard case would immediately receive the attention of the Gen'l Land Office and of the Government. With such assurances from me, they are now daily expecting Mr. John Mullett, or some other just and skillful surveyor, to go on with that work. On the 80 townships, falsely returned as surveyed, &c., and which were the subject of certain legislative resolves of our Michigan legislature, I am told that at least one man or company, tired of waiting, have now commenced erecting expensive mills. Others who would buy are deterred from purchasing because of the fear that is entertained that whosoever buys there, buys-for himself and his "assigns forever,"-interminable lawsuits instead of a good title, by reason of that outrageous fraud in the surveys. I am told that even where more than a year since new or corrected surveys have been made, the officers of the Genesee land office cannot sell under the new surveys, but only under the old false and fictitious ones. This state of things, I am quite sure, sir, you will agree with me, is depreciating. But yet, though the season is fast passing by, I cannot hear that the first step has been taken since the appropriation bill was passed, to correct these aggregate evils. Some eight or ten thousand dollars at least, I suppose, would be requisite to resurvey that country, which was thus falsely returned as surveyed, and of the \$110,000 appropriated I suppose at least \$12,000 or \$15,000 ought to be assigned to Michigan, and the contracts, indeed, long since taken. It does not seem to be remembered that our winters in this high northern latitude come early and remain long. And, without meaning to cast blame anywhere, I certainly consider it deeply to be lamented that this important work has not long since been let out. Doc. Houghton (our geologist) has made a commencement in his work of a geological survey, altho' he has so many difficulties which the ordinary surveys of the country do not present. And with regard to that survey, I wish to remark that that was the subject of a new and specific provision in the lawrunning into some three years-I cannot in any wise be esteemed to the effect either the prosecution of the ordinary lineal surveys here, nor the proportion of the aggregate appropriation for the

year. The great and increasing evils suffered by the State of Michigan, by suffering these false returns of surveys, alluded to

11 - 331

above, to remain without correction, I am sure I need not press upon your consideration. They are of incalculable extent, and have already produced a deep feeling of wrong done throughout our State. In a word, sir, I ask leave most earnestly to press this matter before your immediate attention,

And remain, very respectfully, your obedient servant,

WILLIAM WOODBRIDGE.

And after like offer, objection, ruling and exception, de-106 fendant's counsel read

Ехнівіт 68.

GENERAL LAND OFFICE, September 30, 1844.

Hon. Wm. Woodbridge, Springwells, near Detroit, Michigan:

SIR: I have the honor to acknowledge the receipt of your communication of the 16th inst., and, in reply, to state that of the general appropriation of \$110,000 for resurveying the public lands, made by the act of 17th June last, the sum of \$15,000 was apportioned to the surveying district of Ohio, Indiana and Michigan. The amount thus apportioned is in the same proportion to the amount appropriated, as the sum reported to Congress as the apportionment of the Cincinnati district was to the \$162,000 asked for this office, after deducting \$110,000 for Mississippi, to replace that amount heretofore appropriated for that State and expended else-For the disbursement of the amount thus apportioned, instructions were sent to the surveyor general on the 20th of September, 1844, extracts of which I send you enclosed, marked A, from which you will perceive that the whole apportionment will be expended in Michigan, except a small amount for the correction of some erroneous surveys in Indiana. Now the best information I could collect, I did not deem it advisable that the whole amount apportioned to the Cincinnati district should be expended in correcting the fraudulent surveys north and west of Saginaw bay; in fact it would require more than that amount to have corrected the whole of those surveys, and as it was aggregated as important that surveys and subdivitions should be made in the northern peninsula of Michigan, near the line between Michigan and the British possessions, a portion o that fund was directed to be expended on these surveys also.

The importance and necessity of the correction of the erroncous survey of T 1 S, R 7 E, Michigan, mentioned by 107 you, has been fully realized, and the necessary instructions for that purpose have been prepared and transmitted to the sur-

vevor general, a copy of which is enclosed, marked B.

All the other cases of erroneous or defective surveys in Michigan will be examined and instructions issued as speedily as they can be prepared. Why the land officers should sell by the plats of the fraudulent surveys north and west of Saginaw bay, I cannot imagine, as the plats of the corrected surveys were forwarded to them

by the surveyor general on the 5th June last. I shall, however,

immediately write to them on the subject.

I hope the explanations given above will satisfy you that there has been no unnecessary delay in having those resurveys executed which are so important to the settlers and so much desired by you and this office.

I shall be happy to hear from you as often as your convenience will permit, and will be gratified to forward to the extent of power any measure connected with the land system in Michigan which you may deem important to the interests of that State.

With great respect, your obedient servant,

THOS. H. BLAKE,

Commissioner.

After like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 69

GENERAL LAND OFFICE, October 1, 1844.

Register and receiver, Genesee, Michigan.

Gentlemen: I am advised that, from circumstances which are not explained, you cannot sell the lands north and west of Saginaw bay by the new and corrected surveys, but only by the old false and fictitious ones. You will please to advise me if such is the fact, and

the cause of it.

The plats of the fraudulent surveys should have been can-108 celed immediately on the receipt of the plats of the new surveys, and proper references made on them to these new plats, so that the plats of the fraudulent surveys should not be used under any circumstances.

Very respectfully, your obedient servant,

THOS. H. BLAKE, Commissioner.

After like offer, objection, ruling and exception, defendant's counsel read extracts from the reports of the Commissioner of the General Land Office and surveyor general for the years 1844 to 1848, inclusive, as

EXHIBIT 70

Report for the Year 1844,

Being House Document No. 15, Treasury Department, Twentyeighth Congress, second session.

Page 4 (from Commissioner's report):

"I regret to communicate that the errors and frauds in the surveys in this State, which occurred in 1837 and 1838, in townships north and west of Saginaw bay, have not yet been fully corrected. It must have been as much a source of vexation here, as

to the citizens there, that these troubles should have interrupted their onward course."

Page 48 (from Commissioner's report):

"In Michigan, the resurvey of the defective and erroneous work north and west of Saginaw bay, to the extent authorized by your instruction of the 18th April, 1843, has been completed."

"Your instructions of the 20th ultimo directs the continuance of the resurveys in that quarter to a limited extent, and contemplates their completion when the necessary appropriations shall be made by Congress. The resurveys now ordered have been com-109

mitted to one of my most skillful and efficient deputies in Michigan."

And on page 50:

"With this report I transmit the usual exhibits, together with the estimates for the fiscal year ending June 30, 1846, to wit:" And on page 52:

C

Estimate of the amount of disbursements for surveying the public lands and for contingent expenses at the office of the surveyor general of Ohio, Indiana, and Michigan for the fiscal year ending June 30th, 1846.

" For resurveying 44 townships of erroneous and defective surveys west of Saginaw bay, Michigan (say 70 miles each), at \$2.75 per mile..... ... \$8,500.00 "

Report for the Year 1845,

Being Senate Document No. 16, Twenty-ninth Congress, first session.

Page 44 (from surveyor general's report):

"In Michigan, since the last annual report of this office, twelve townships of the erroneous and defective surveys, north and west of Sagmaw bay, have been resurveyed, and copies of the maps thereof were transmitted to the general and district land offices early in the present year." Says also that work will be put under contract "as soon as practicable, so far as the appropriation of ten thousand dollars, made by the act of the 3d of March last, will pay

And on page 48:

"The estimates and exhibits herewith enclosed are as follows, viz:

And page 49:

Estimate of the amount of disbursements for surveying public lands and for contingent expenses of the office of the surveyor general of Ohio, Indiana, and Michigan for the fiscal year ending June 30th, 1847.

Report for the Year 1846,

Being House Document No. 9, Treasury Department, Twenty-ninth Congress, second session.

Page 40 (from surveyor general's report):

"In the southern peninsula of Michigan, thirty-two townships of erroneous and defective surveys, north and west of Saginaw bay, have been resurveyed, and the township plats made and transmitted to the General Land Office. * * * There is reason to believe, however, that many of the surveys heretofore made in the northern portion of the peninsula are erroneous and fraudulent, and that resurveys will have to be made to a very considerable extent. Examination ought now to be made of the suspected districts, in order that resurveys, if necessary, may be made before the sales of lands shall embarrass the proceeding."

Report for the Year 1847,

Being Executive Document No. 2, Senate, Thirtieth Congress, first session.

Page 75 (from surveyor general's report):

"The more the old surveys in the northern part of the peninsula are examined, the more certain it appears that a large portion of them has been so loosely and fraudulently made, that extensive resurveys will be necessary. The woods and swamps in that part of the peninsula are so difficult to get through, and the price paid for the original work there was so small, that no surveyor could possibly do his work well, and receive a fair compensation for his services."

Names some deputies, who, "finding it impossible to do their work well without losing money by their contracts, returned, as surveyed, many lines, and even whole townships which had not

been surveyed at all; and, as this office had no means of detecting the fraud thus committed, their work was received and paid for at the usual rates."

Report for the. Year 1848,

Being Executive Document No. 12, House of Representatives, Thirtieth Congress, second session.

Page 82 (from surveyor general's report):

"Two contracts were made last spring, one dated the 30th of March and the other the 29th of April, for examining and resurveying, if found necessary, certain old surveys in the vicinity of the Maskego and Manistee rivers, in southern Michigan, that were believed to be more or less erroneous and fraudulent. The extent of such resurveys was not, however, to exceed in all five hundred and ninety-five miles, so that the cost thereof at the prices named in the contracts, should be somewhat less than the amount of the unexpended balance of the appropriation of the 10th of August, 1846, for the correction of erroneous and defective surveys in this State.

Field-notes of the resurvey of four townships, which were originally surveyed by John P. Allard, under his contract dated 16th of July, 1838, and of part of a township originally surveyed by John Brink, under his contract dated the 18th of February, 1839, have been returned, examined and approved under the first-named contracts. From these returns, and the testimony of the men who assisted the surveyors in making the resurveys which they describe, it appears that Allard's field-notes of his survey of those townships are almost wholly fictitious and fraudulent, and that Brink's are, so some considerable extent, of the same character.

Mr. Allard had three contracts for subdividing in this portion of Michigan, dated the 28th of July, 1837, 16th of July, 1838, and the 26th of January, 1839, embracing in all thirty-two entire townships, the resurveys of which, as returned by him and approved at this office, are probably all of the deprector above described.

this office, are probably all of the character above described.

Mr. Brink had two contracts, one dated the 18th of February, 1839, for the subdivision of about twelve townships lying on the Manistee river, and the other dated the 13th of December, 1839, for the subdivision of twelve townships lying on the headwaters of the Maskego river, making together about twenty-four townships, the survey and returns of which are probably simi-

lar in character to the work of his above mentioned.

There are other surveys in this portion of the State that are strongly suspected, but enough is not known at present to justify the expression of any positive opinion against them. The diagram marked L, accompanying this report, shows the names of all contractors who subdivided in southern Michigan, north of the Grand, Chippewa, and Tetibawassee rivers, together with the dates of their contracts and the location and boundaries of their respective districts.

The surveys of Mr. Allard above mentioned, embrace a large tract of very good country, and ought to be corrected, if erroneous, before any sales are made therein. I have, therefore, made an estimate of ten thousand dollars for this purpose, which will be found in the accompanying statement K, added to the estimate for

the coming year, which were sent you with my letter of the 28th of September last. The maximum price of the work therein stated is as low as experience will allow."

K.

Page 104:

Estimate of appropriations required for surveying the public lands and for incidental expenses in the district of the States of Ohio, Indiana and Michigan for the year ending June 30th, 1850.

"For the correction of erroneous and defective surveys in southern Michigan, at a rate not exceeding \$6 per mile. \$10,000"

And after like offer, objection, ruling and exception, defendant's counsel read

EXHIBIT 71.

GENERAL LAND OFFICE, WASHINGTON, D. C., February 17, 1849.

Hon. A. Felch, Senate U. S.

Sir: In accordance with your request of this morning, I this day sent a letter to the Hon. S. Breese, as Ch. of the Comm. of Public Lands, requesting him for the reasons therein given, to have introduced into the general appropriation bill, an item of \$10,000 "for the correction of erroneous and defective surveys in southern Michigan, at a rate not exceeding six dollars per mile."

With great respect, your ob't serv't.

RICHARD M. YOUNG,

Commissioner.

After like offer, objection, ruling and exception, defendant's

Ехнівіт 72.

GENERAL LAND OFFICE, WASHINGTON, D. C., February 17, 1849.

Hon, S. Breese, Ch. Com. Pub. Lands, Senate U. S.

SIR: My attention has been called to an item in the annual report of the surveyor general at Detroit of \$10,000 for the correction of erroneous and defective surveys in southern Michigan. This tem was not included in the annual estimates from the sur. gen'll on which those from this office were based, and hence is not empraced by the latter. As there is no doubt, however, of the expeliency and necessity of this appropriation, I respectfully request that it may be inserted in the general appropriation bill in the fol-

lowing form, to wit:

For the correction of erroneous and defective surveys in southern Michigan, at a rate not exceeding six dollars per

nile, ten thousand dollars.

14

With great respect, your ob't serv't,

RICHARD M. YOUNG, Commissioner.

After like offer, objection, ruling and exception, defendant's counsel read:

Ехнівіт 73.

Surveyor General's Office, Detroit, July 10, 1849.

Sir: On the 23d of last month I received from your predecessor two letters dated the 4th ult., one relating to the appropriation made at the last session of Congress for the payment of salaries in this office, and the other relating to his apportionment of \$23,240 for surveys, and to the appropriation of \$10,000 for the correction of erroneous and defective surveys in this district for the year ending on the 30th of June, 1850,

In reference to the latter, he suggests" that the deputies who may be entrusted with the correction of the erroneous surveys be especially instructed to re-establish all the original lines and corners where they can be clearly identified, and, where they cannot, to resurvey them in strict accordance with the original field-notes, apportioning all errors and discrepancies of course and distance among the boundaries of sections affected thereby."

In reply to this suggestion, I beg leave to say that from examinations that have been made by William A. Burt, Esq., within the last three months, it appears that most of the field-notes originally returned to this office by H. Nicholson, N. Brookfield and J. Brink, as containing a true description of surveys made by them under their respective contracts, dated 20th of July, 1838, 30th of Nov.,

1839, and 13th of December, 1839, are fictitious and fraudulent. In many of the townships examined more than three-115 quarters of the lines therein have never been run and marked at all, and where lines were found they were frequently so crooked and so far out of the way from where they should be, that I deem it much better, as well as less expensive, to make an entire new survey, than to attempt to join new lines to the old ones, which, after the best that can be done, will make a patchwork that will inevitably be grossly erroneous.

The districts above referred to are all bounded on the east by the principal meridian, and lie between townships No. 17 and 24 N, in the State of Michigan. They may be seen marked out on the diagram of surveying districts which accompanies my last annual report.

Mr. Burt is still in the wilderness pursuing his examinations in the middle and eastern portion of the northern part of the southern peninsula, and Orange Risdon, Esq., another of my deputies, is making similar examinations in the western portion of the same peninsula, between Muskego river and the straits of Mackinaw. The compensation that these deputies are to receive has not been agreed on, but is to be such as you may see fit to allow when you have seen the services performed by them.

I consider such an examination as they are making indispensably necessary to enable the Government to know what frauds have been committed by surveyors in Michigan, that they and their

sureties may be prosecuted as soon as possible, while something yet may be collected of them to pay the expense of correcting their work. I knew, also, that such an examination would be highly useful in determining where and how the appropriation of \$10,000, before referred to, would be expended to the best advantage. I therefore accepted the offer of the services of Mr. Burt and Mr. Risdon for these purposes, without waiting for special authority from the Commissioner to do so, and hope what I have done may meet your approbation.

Mr. Risdon has not been heard from since his arrival at the place where he is to commence his examinations, and nothing new is, therefore known about the characters follows:

new is, therefore, known about the character of the surveys in the districts near Lake Michigan: but I have returns from Mr. Burt up to the 3d of last month, and the surveys of every district and of almost every township examined by him previous to that date proved to be fraudulent, as before stated.

Very respectfully, your ob'd't serv't,

LUCIUS LYON, Surv'y'r Gen't.

Justin Butterfield, Esq., Commissioner of the General Land Office.

(July 16, 1849. Mr. L. Wilson.)

After like offer, objection, ruling and exception, defendant's counsel read extracts from the report of the Commissioner of the General Land Office and surveyor general for the year 1849 as

Ехнівіт 74.

Report for 1849.

Page 267 (from surveyor general's report):

"No contracts have been made for the resurveys under the appropriation of the last session of Congress, for the reason that to enter into such contracts understandingly, it was necessary to procure more full and definite information in relation to the character of the defective surveys than has been heretofore in possession of this office. For this purpose, after writing your predecessor on the subject, William A. Burt and Orange Risdon, Esqs., two experienced and faithful deputies, were employed and furnished with copies of the plats of about two hundred and eighty townships, which they were requested to examine, as far as practicable, and to report the results of their examinations for for your consideration.

"The district assigned to Mr. Burt extended from the south boundary of township seven north, in range one west, north and

west to Grand Traverse bay of Lake Michigan, and that assigned to Mr. Risdon extended south from that bay to the Grand river.

"Nothing has been heard from the latter, but from Mr. Burt field-notes have been received, describing examinations made by him in districts originally surveyed by the following persons, viz: 12-331

Robinson Thomas, C. W. Christmas, Joel Wright, Henry Nicholson (two districts), J. N. Higbee, Noah Brookfield, John Brink, Henry Brevoort, Jr., and James H. Mullett, John P. Allard and Sylvester Sibley, and John Hodgson, which districts are numbered, on the accompanying diagram (marked P), 2, 5, 3, 11, 25, 16, 35, 36, 37, 27 and 28, and contain in all, one hundred and sixty-one townships.

"From these examinations, which were made only in a part of each district, but still far enough to determine the character of the work, it appears that, in the surveys returned by Messrs. Thomas, Wright, Higbee and Sibley and Hodgson, embracing seventy townships, the lines, as far as examined, have nearly all been run and marked, as represented in the field notes, but the returns of surveys in the other seven districts, embracing ninety-one townships, are grossly fraudulent—the greater portion of the field-notes thereof being wholly fictitious, or descriptive of lines and corners that were never established.

"For a more particular account of the surveys examined by Mr. Burt, see statement N.

"There are one hundred and seventy townships in the southern peninsula of Michigan, north of the Grand and Saginaw rivers, that have been returned to this office as surveyed by the persons who committed the frauds there described. Out of these and the fraudulent surveys of other persons, whose work has not been examined, it is probable that at least one hundred and fifty townships will require to be resurveyed in this peninsula. This work should be done as soon as practicable, for the examination of Mr. Burt has developed the fact that, in the country between the heads of the Tettabawassee river and Grand Traverse bay, there are large tracts

of good land, which, now that they are known, are likely soon 118 to be settled for farming purposes. The cost of the resurveys that will be required in this part of the State will be about fifty thousand dollars—only a small portion of which can ever be collected on the bonds given by the delinquent deputies for the faithful performance of their contracts. It so happens that, in every case but one, the security afforded by these bonds is deemed to be insufficient or doubtful. They were considered good when given, and most of them would have been good at the present time but for some unfavorable change in the pecuniary circumstances of the parties since they were entered into. Instead of profiting by their frauds, as they expected, the delinquent deputies are all now poor. Their condition, in this respect, is a striking illustration of the immutable, heaven-taught truth, that 'riches fraudulently acquired pass away, or are dissipated so that the parties themselves know not

by what means, whereas others are enriched thereby."

"By reference to the papers M. and P., it will be seen that the frauds above mentioned were all committed several years before I took charge of this office. I have now to perform the disagreeable duty of referring to and exposing a similar fraud committed last year by one of my deputies, residing, then, in this city, in whose integrity I, in common with the whole community, had the fullest confidence. The deputy alluded to is Sylvester W. Higgins, for-

merly chief of the topographical department of the geological survey of Michigan, and afterwards receiver of public moneys in the United States land office at this place, who is now in California.

"In examining the returns of six townships surveyed by him last year, discrepancies were discovered in his field-notes of township 50 north, range 36 west, and township 50 north, range 37 west, in this State, which induced the suspension of his account for the survey of those townships, until his work could be examined on the ground, and its correctness ascertained beyond all doubt. This duty has been performed, under my instructions, during the past summer, by William Burt, a competent deputy, whose integrity has never been questioned. He has this day returned from

bis work, and from his report of examinations made in each 119 of the six townships above referred to, it is now fully ascertained that the field-notes of the survey of those townships, which were returned to this office and sworn to by Mr. Higgins, are in many particulars false, and that his surveys on the ground are exceedingly erroneous and fraudulent. He appears to have run and marked most of his lines, and to have established all, or nearly all, his section and quarter-section corners, but his field-notes cannot be depended on as giving either the true courses or lengths of those lines, or the cardinal points towards which they were run, nor can their truth be relied on in anything. They describe all the east and west lines as run randum, and corrected back so as to be straight from corner to corner of sections, as required by instructions, when, in fact, they have not been corrected at all, but are almost invariably left crooked, and the corners on them out of place. This may serve as a fair sample of their character, as well as of the character of the work itself. All that he has done is worse than useless, because, in addition to the labor of making an entire new survey, it will now be necessary to find and cut out corners that he has established.

"The surveys made by him in previous years have not yet been examined, but there is reason to apprehend that they are of a similar description. They appear well on paper, but it must not be forgotten that the real character of surveys can only be known by the field-notes when these notes are strictly true, and that where the notes are false, if they are made up with care, there is no way by which their falsity can be detected, except by examination of the surveys on the ground. * * *

"It is due to Judge Burt and to his son William Burt, the deputies who made the examinations before mentioned, to say that they appear to have discharged the unpleasant duty assigned them in the most faithful and impartial manner. A proof of impartiality may be seen in the fact that the former is one of the sureties of Henry Nicholsou, for whom he will probably have to pay nearly three thousand dollars, in consequence of his own report.

M.

Description of Contracts under which Townships have been Subdivided in

No. of districts on diagram.	Name of deputy.		Residence of deputy.		Name of sureties		Residence of sureties.	
*		*	*	4	- 4			
*	1	*	46	4	1 24	*		*
5	Charles V	V.Christ-				- 10		*
	mas.					reties	*****	
16	- 11-	*	*	*	No be	ma.		
*	*	10	46	*	- 46			*
*	- 12	95		*	- #	46		**
16	Isaac N.	Higbee	Michiga	n	James	W. Tabor,	Clinton Mich.	* county,
*	*	- 66	-16-	45	-86			
25	Henry N	icholson.	Northvil	le, Mich.	В. Н.	Rowland	Northvil	* le, Wayne
*	46	9.		**	and	J. Cram.	county	Michigan
*	- 6	*		- 14	*	*		6
36	John Bri	nk	Northvil	le. Mich	John	* Mullett	12 4	
					and	B. F. Hall.	Detroit,	Mich.
37	Jr., and Mullett.	J. H.	Detroit,	Mich	John and	Mullett J. Hodg-	Wayne C	o., Mich.
*	#	*	-	*	son.	*		
					*	*	9	

Note.—The original contracts for the subdivision of districts marked A, B, C, D, E, F, and G on diagram (now resurveyed) are not on file in this office. They were sent from this office, at Cincinnati, to George C. Bates, Esq., United States district attorney of Michigan, on the 23d of May, 1843, and by him sent, as he states, to the solicitor of the Treasury at Washington.

M.

that Portion of Michigan Lying North of Grand and Saginaw Rivers.

Date of contract.	Am't of penalty in bond.	Character of bond.	Amount of account transmitted to.	Remarks.
*	46	*	4	
#	*	44	*	₩.
Dec. 16, 1830			1,909 22	*
*	*	- 10	46	
*	*	*	#	*
46	*	*	*	46
Jan. 30, 1838	\$3,300 00	Good	1,894 58	Mr. Higbee said to have gone to Cali-
4	*	*	*	fornia.
Do	3,000 00	Good	1,521-64	*
46	*	*		
#	*	*	#	*
Dec. 13, 1839	4,800 00	Insufficient	1,955 46	*
Do	9,600 00	Do	4,042 78	
×	*	*		

Surveyor general's office, Detroit, November 5, 1849.

LUCIUS LYON, Surveyor General.

N.

Description of Townships in Michigan in which Examinations of Original Surveys Have Been Made During the Year of 1849 by William A. Burt, Deputy Surveyor,

No. of		Town	Range
* 16	* * * * * * * I. N. Higbee	18 N	4 W
ă	* * * * C. W. Christmas.	* 13, 14,] 15, 16] and	1 W
		and 17 N 13 N	2 W

Henry Nicholson

17 N

and

16

2 W

3 W

4 W

Name of deputy.

Six miles of section lines, including the south boundaries of sections 34 and 35, were examined in the southeast portion of this township, and, as the work was found to have been carefully done, and the random lines corrected according to instructions, it was believed to be fully done, and the random lines corrected according to instructions, it was believed to be unnecessary to carry the examination of Mr. Higbee's survey any further.

Character of surveys.

Townships 16 and 17 appear to have been tolerably well surveyed, though gross errors and omissions are found in the descriptions of swamps, streams, &c. The lines in the other four townships (where any can be found) are very poorly marked, generally only on one side of the trees, and the random lines were evidently not corrected according to instructions. In many places no lines or corners could be found, especially in townships 14 and 15 north, and in other places the corners that were found were so poorly marked, that it was impossible to identify them. Both lines and corners are generally so far out of place that no use can be made of them in a correct survey; and if the work in the remaining townships that were not examined should prove to be of the same character, an entire resurvey of the whole district, with the exception of townships 16 and 17 north, will be expedient if the quality of the land therein should be deemed good enough to justify the expense that would be incurred, of which there may reasonably be some doubt.

In these townships, as far as they were examined, nearly one-half of the lines and quarter-section corners described in the original field-notes have never been established. The other half of the lines were run, and marked either east, west, north or south, as was most convenient, for the purpose, apparently, of establishing the section corners. Both lines and corners are, therefore,

Description of Townships in Michigan, etc.—Continued.

No. of district	Name of deputy	Township.	Range.	Character of surveys.
123 25	Henry Nicholson	and 20 N 18, 19 and 20 N 18, 19 18, 19	1 W 2 W	he had made his returns of the one de- scribed above, and his work in it is found to be no better, but rather worse than it was in that. Examinations were made in every township, and those
35	Noah Brookfield.	and 20 N 21 N 21 N 21 N 22 N 21 and 22 N 22 N 222 N 222 N	3 W 1 W 2 W 3 W 4 W 5 W	In the 7 townships examined in this district, it was found that less than one-third of the lines and corners described in the field-notes returned to this office, had any existence on the ground. The few that could be found were very poorly marked, and so erroneous that an entire resurvey is necessary. To gain a thorough knowledge of the old survey in township 22 north, range 3 west, that township was resurveyed by Mr. Burt, from whose field-notes it appears that the aggregate lengths of all the light
36	John Brink	23 N 23 and 24 N 23 and 24 N 23 N	2 W 3 W 4 W 5 W	that were run therein, by the original contractor, does not exceed two miles, or about one-thirtieth part of the distance that he was paid for. The character of the original survey of this district is found to be similar to the survey of Mr. Brookfield's described above, but the lines in this are better marked than in that, and the proportion of those that have been run is perhaps somewhat greater here than there.
<i>31</i>	Jr., and James H. Mullett	26 N 25, 26 and 27 N 25 and 26 N 26 N 30 and 26 N 31 32 33 34 35 and 26 N 35 and 36 37 37 38 38 38 38 38 38 38 38 38 38	1 W 2 W 3 W 4 W	The original survey of this district appears to be no better than the survey of the last two. Township 26 north, range 7 west, has been resurveyed by the examiner, who states that he made diligent search for the lines and corners of the old work, and that he believes that the whole lengths of the lines in the townships that were actually run and marked by the contractors for that

Description of Townships in Michigan, etc.-Continued.

No. of district on diagram.	N:	ame o	of dep	uty.	Township.	Range.		Char	acter of s	arveys.	
					25 and 26 N 25 and 26 N	6 W	lished	mes and Lare, ger	exceed fift corners nerally, so as to be	that they	estab-
*	*	*	长	*	*	- 19	46	46	*	46	

LUCIUS LYON, Surveyor General.

Surveyor general's office, Detroit, November 5, 1849.

The document marked "P" is a map accompanying the foregoing report, showing the territory covered by contracts in Schedule "N," showing town 18 north, of range 3 west, to have been covered by Henry Nicholson's contract, and township 18 north, of range 4 west, to have been covered by I. N. Higbee's contract.

Estimates of appropriations required for surveying the public lands and for incidental expenses in the district composed of the States of Ohio, Indiana, and Michigan for the year ending June 30, 1851.

After like offer, objection, ruling and exception, defendant's counsel read

EXHIBIT 75.

Resurveys in the State of Michigan.

By acts of 3d March, 1845, and 10th August, 1846, appropriations were made for correcting surveys west of Saginaw bay, in Michigan, which, on examination, have been found to be defective or fraudulent. These surveys are more fully described in letter of 18th April, 1843, to the sur, gen. N. W. of the Ohio, vol. 9, p. 155, of sur, gen.'s letters. After the corrections of the surveys named in this letter had been completed, the sur, gen. at Detroit contracted with Orson Lyon and Orange Risdon for the correction of other surveys in lower Michigan to the extent of 595 miles, or \$3,200. The contracts for this work were dated 30th March and 29th April, 1848, respectively, but were not received at this office until the 21st Au-

gust following, when it was supposed the field operations of the deputies had progressed too far to admit of anything being done by the department in the premises. The sur. gen. was, however, written to on the 22nd August, the day after the receipt of the contracts, as follows, to wit:

"Aside from the question whether the appropriations made by the acts of 1845 and 1846 for resurveys west of Saginaw bay can be applied to the payment of this service, of which there is great doubt. inasmuch as those appropriations were based upon a specific report relative to the surveys returned by the Rosseaus, Coon, Reilly &

Gist.

"I would suggest that the comptroller will pass no account for resurveys of this character without an account being reported at the same time against the deputy who executed the original survey, that suit may be brought against him and his sureties for the expense thus incurred in revising and correcting his work. No such account can be reported by this office without the clearest and most ample testimony from disinterested sources of the fraudulent character of the work. Hence, these cases must be accompanied by such testimony, and, in future, before ordering a resurvey in any case, you will confer with this office and furnish a copy of the evidence before you as to the character of the original work.

"It would also be well, in all such cases, to ascertain whether the land is settled upon or worth surveying, and whether it would command a sale if resurveyed, as it is by no means expedient that a double expense should be incurred for surveying valueless lands,

as this would appear to be from your reports.'

Sur. Gen. Lyon appears to have had his attention directed to the condition of the surveys in the southern peninsula of Michigan as far back as 1846, and in his report of 7th November of that year he expressed the apprehension that many of those surveys would prove to be of a similar character to those west of Saginaw bay, and recommended an early examination of the same.

In his next annual report, dated 5th November, 1847, he again

refers to this subject in the following manner, viz:

126 "The more the old surveys in the northern part of this peninsula are examined, the more certain it appears that a large portion of them has been so loosely and fraudulently made that extensive resurveys will be necessary. The woods and swamps in that part of the peninsula are so difficult to get through, and the price paid for the original work there was so small that ne surveyor could possibly do his work well and receive a fair compensation for his services. Most of the deputies who were residents of Michigan intended, it is believed, to do their work well as it could be done, for the price that they received for it; but others, and especially the greater number of those whose residence was in other States, among whom were Geo. W. Reilly of Ohio and R. H. and I. A. Rosseau of Kentucky, finding it impossible to do their work well without losing money by their contracts, returned as surveyed many lines, and even whole townships, which had not been surveyed at all, and as

this office had no means of detecting the fraud thus committed, their work was received and paid for at the usual rates."

Again, in his annual report of 24th November, 1848, he urges the necessity of an examination and a correction of these surveys, and submits an estimate therefor of \$10,000, with the request that the same may be included in the estimate of the department.

This request was not complied with, but on the 17th February, 1849, a special application was made by this office, at the instance of the Hon. A. Felch, to the chairman of the Committee of Public Lands of the U. S. Senate, to cause an item of ten thousand dollars to be inserted in the appropriation bill "for the correction of erroneous and defective surveys in southern Michigan, at a rate not exceeding six dollars per mile." That application was granted, and an appropriation of \$10,000 made accordingly by act of 3d March, 1849. Under this appropriation, the sur. gen. was, on the 4th June, 1849, instructed as follows, to wit:

"The instructions heretofore issued will govern you in making these contracts, and I would further suggest that those deputies who are intrusted with the correction of the erroneous surveys in

127 southern Michigan be specially instructed to re-establish all the original lines and corners where they can be clearly identified, and, where they cannot, to resurvey them in strict accordance with the original field-notes, apportioning all errors or discrepancies of course and distance among the boundaries of sections affected thereby."

Before entering into any contracts for resurvey under this appropriation, the sur. gen. deemed it proper first to cause a thorough examination to be made of the suspected surveys; and for this service he appointed William A. Burt and Orange Risdon, two experienced deputies, furnishing them with copies of the plats of about two hundred and eighty townships, which they were requested to examine, as far as practicable, and to report the results of their examinations for the consideration of the department. In his report of the 5th November, 1849, the sur. gen. thus refers to this subject:

"From these examinations, which were made only in a part of each district, but still far enough to determine the character of the work, it appears that in the surveys returned by Messrs. Thomas, Wright, Higbee, and Sibley and Hodgson, embracing seventy townships, the lines as far as examined, have nearly all been run and marked as represented in the field-notes: but the returns of surveys in the seven other districts, embracing ninety-one townships, are grossly fraudulent, the greater portion of the field-notes thereof being wholly fictitious or descriptive of lines and corners that were never established."

The surveys thus reported fraudulent were returned by C. W. Christmas, Henry Nicholson (two districts), Noah Brookfield, John Brink, Henry Brevoort, Jr., and James H. Mullett and John P. Allard. These surveys appear to have been all examined by Deputy Burt, Risdon, the other deputy, at that time having made no return; and with reference thereto the sur. gen. reports as follows, viz:

"It is due to Judge Burt, and to his son William Burt, the deputies who made the examinations before mentioned, to say that they appear to have discharged the unpleasant duty assigned

to them in the most faithful and impartial manner. A proof of impartiality may be seen in the fact that the former is one of the sureties of Henry Nicholson, for whom he will probably have to pay nearly three thousand dollars in consequence of his own report."

In the same report the sur. gen. estimated that about one hundred and fifty townships in the lower peninsula of Michigan would require to be resurveyed, at a cost of about fifty thousand dollars, and requested that an appropriation of twenty thousand dollars should at once be asked for with which to commence the work. This request, however, was not received until after the estimate of the department had been made up, and hence the amount called for was not included in those estimates.

To supply the omission thus caused, additional estimates were made up on the 23rd April, 1850, including this item, and sent to the Hon. D. S. Dickinson, chairman of the Finance Committee of the Senate, and the Hon. T. H. Bailey, chairman of the Committee of Ways and Means of the House, with the following statement

explanatory of the same, to wit:

"The item for resurveys in the southern peninsula of Michigan has been inserted since the original estimates were sent in from this office. It was not included in those estimates for the reason that this office was not then advised of the existence and extent of the fraudulent surveys in that region, the report of the surveyor general having been delayed by the examination of those frauds. The necessity for those resurveys is urgent, as the land is attracting great attention from the value of the timber on it."

And again, on the 6th August, 1850, letters were written to the Hon. T. H. Bailey, of the House, and Hon. A. Felch, chairman of the Committee on Public Lands of the Senate, urging the necessity of this appropriation. These applications resulted in securing an appropriation of \$20,000 (by the act of 30th September last) of

which the sur, gen, was advised by letter of the 17th October last, in which he was specially instructed to "contract with none but good, practical surveyors of good, moral character, and such only as are known to you (him) to be of this character, or are so certified by men of respectability and standing, who are willing to unite in their bonds." Up to the present time only one contract has been received at this office under these appropriations, the sur. gen, deeming it important, before prosecuting the resurveys, to cause further examinations to be made, with the view of ascertaining the nature and extent of the existing frauds. The results of these examinations have been in part reported to this office, and go far to sustain the previous reports from the Detroit office and the opinions based upon those reports. It would appear, then, that every step in this matter, so involved and full of difficulty, has been taken with the utmost deliberation, and that nothing has been done which did not seem to be absolutely required by a proper regard for the public interest. And if anything could add to the

character of Deputy Surveyor William A. Burt, by whom the gross frauds in question have been exposed, as a man of stern integrity, would it not be the fact that he has exposed those frauds at a pecuniary sacrifice of about three thousand dollars? Before closing this statement, it is thought proper briefly to refer to the frauds in the surveys west of Saginaw bay, in Michigan. A knowledge of these frauds was first communicated to this office by a joint resolution, passed on the 1st February, 1842, by the legislature of Michigan, and by the governor of the State sent to the President of the United States, who, on the 16th February, 1842, referred it to the depart-

As the returns in this office all appeared fair, it was recommended that the sur. gen. at Cincinnati (E. S. Haines) be called upon for a report upon the character of the surveys referred to in the resolu-The President directed that course to be pursued, and the requisite instructions were accordingly issued to that officer. In

reply, he expressed surprise at the allegations made, and suggested that an experienced deputy surveyor, say Mr. Wm. 130

A. Burt or Mr. John Mullett, be employed to go on the ground and examine each township (or a sufficient number of them in each district to satisfy himself concerning the whole), and ascertain and report the exact condition of the surveys in each.

Mr. Burt was sent to the field, and on the 1st August, 1842, Sur. Gen. Johnston (Haines's successor in office) reported the result of

his investigations as follows, viz:

"The report of Mr. Burt, you will see, furnishes abundant proof that the surveys examined by him are grossly defective and fraudu-And there is a high probability that the remaining townships in the same contracts not examined by Mr. Burt are as defective as those

It would seem, then, that as far back as 1st August, 1842, the frauds now developed were, in part at least, suspected by the sur-

vevor general at Cincinnati.

MOSES KELLY, Clerk.

General Land Office, February 14, 1851.

After like offer, objection, ruling and exception, defendant's counsel read extracts from the report of the Commissioner of the General Land Office for the year 1850, as

Ехнівіт 76,

Being Executive Document No. 2, Senate, Thirty-first Congress, second session.

Page 2 (the number of acres surveyed and remaining unsurveyed):

Michigan—Surveyed to September 30th, 1850, 30,629,076 Unsurveyed to September 30th, 1850. 5,366,444

Page 3 (from Commissioner's report):

"Every effort has been made by the surveyor general and this

office to prevent errors and frauds in the public surveys, and 131 for this purpose stringent regulations have been adopted and explicit instructions issued. Notwithstanding these precautions it has recently been discovered that in some of the surveys executed many years ago, especially in the northern part of the southern peninsula of Michigan, errors and frauds were committed,

and a few of like character are of more recent occurrence.

"These evils cannot be wholly remedied by existing legislation or instructions. They are caused by the want of skill or integrity on the part of the deputies, and can only be prevented by an active surveillance in the field-for which, and the expenses attending it, there is no authority of law-or by the employment of such deputy surveyors only as are of unimpeachable character and high scientific attainments. Since the discovery of the errors and frauds alluded to, special instructions have been dispatched to the surveyor general to employ none but such as are of tried integrity and unquestionable abilities, and additional regulations have been adopted in regard to their bonds in order to insure, as far as possible, a reimbursement to the Government if the surveys now in progress of execution should not come up to the requirements of the department."

And on page 16.

"Under the act passed by Congress on the 28th of September, 1850, 'to enable the State of Arkansas and other States to reclaim the swamp lands within their limits,' it was decided, with your approbation, to charge the surveyors general of the several States in which their offices existed, in the first place, with making out lists of the lands granted to those States by that law, and where these offices were abolished, to devolve that duty on the land officers of the respective districts. Full instructions have been made out and transmitted for this purpose; and by those instructions the act of Congress will be carried out, the right to all the swamp and overflowed lands unfit for cultivation secured to the States, and the interests of the Government protected."

132

"For resurveying and correcting erroneous surveys in the lower peninsula of Michigan, at a rate not exceeding six dollars per mile...... \$10,500 00 "

Page 67 (from surveyor general's report):

"The twenty-three townships situated north of the third correction line in the Lower Peninsula have been put under contract; but, owing to great irregularities in the township lines, it was found impracticable to close the work east of the meridian upon the old surveys north of it, and on this account two of the townships were left unsurveyed. In the other seven townships (of the twenty-three before mentioned) lying east of the meridian, the original surveys of the township lines were found so defective and erroneous that a resurvey of the whole was indispensably necessary to enable the deputies to proceed with the subdivisions; and although three dis-

tricts of subdivisions, made in 1840, join these townships on the north and east, no mention seems to have been made or notice taken of these defects and errors, and it is found from the reports of the deputies that the whole of the old work, both township lines and subdivisions north of the third correction line and east of the meridian, will have to be resurveyed. The two districts south of this, subdivided by W. R. Coon and T. Pattison in 1839, and heretofore reported as fraudulent, are in no better condition than the surveys last named, as appears from the report of Mr. Burnham. who has just returned from examinations in that region, which will be forwarded with his account in a few days.

"A district of ten townships situated near Saginaw bay, subdivided in 1837 by Henry Nicholson, has been resurveyed and corrected during the past season by William A. Burt, Esq., who was one of the sureties in the bond of Mr. Nicholson, given to insure the faithful performance of his contract. Five of the townships

were entirely resurveyed, and the other five corrected and completed, so that the whole district is now in good condition: 133 and it will be unnecessary for the United States to prosecute further the suit against Mr. Nicholson or his bondsmen in this con-Mr. Burt's field-notes of these resurveys and corrections have

not yet been received, but his returns are daily expected.

"Resurveys have also been made in other districts that were reported fraudulent in the field-notes of examinations made last year, but as those examinations were made in a superficial manner, giving, it is true, sufficient evidence of the imperfect character of the original surveys in each district, but not in every township, the deputies intrusted with the resurveys were required before commencing the resurvey of any township, to ascertain the character of the old surveys, and not to make any resurveys where they were unnecessary. Twelve townships have been resurveyed under one contract in the district subdivided in 1839 by Messrs, Sibley & Hodgson, situated near Grand Traverse bay. The field-notes of three of these have been returned to this office, and the account, with the plats, have been forwarded to your office. The field-notes of the remainder are daily expected.

"Other townships have been resurveyed in the same district, as also in the district north of the third correction line, embracing the point of land on the west side, and forming Grand Traverse bay, but the deputy is still in the field, and it is not known how far he

has progressed with his work.

The lands in this vicinity are valuable, both from their fine agricultural character, and because of the easy access to navigable water; a settlement has already commenced on the west side of the bay, and considerable land has been sold in the vicinity; but the bad condition of the surveys renders it very difficult to identify the tracts purchased, and has deterred many who would otherwise have purchased from entering these lands. It is reported by persons residing at this settlement that the surveys north of the third correction line are very defective, so that the same difficulty is there experienced in locating the land purchased."

134 Estimate of appropriations required for surveying the public lands and contingent expenses in the district composed of the States of Ohio, Indiana, and Michigan for the fiscal year ending the 30th of June, 1852.

For resurveying twenty-five townships in the Lower Peninsula, averaging 70 miles each, at a rate not exceeding \$6 per mile..... \dots \$10,500 00

Schedule D, annexed to the report, is a map of the State of Michigan, entitled, sketch of the public surveys in Michigan, and shows state of surveys in Michigan, and indicates the towns that are defectively surveyed. 18, 3 W is indicated on the map as defectively surveyed.

After like offer, objection, ruling and exception, defendant's counsel read

EXHIBIT 77.

Surveyor General's Office, Detroit, March 5, 1851.

Sir: The season having nearly arrived for the letting of new contracts for surveys, and an appropriation being already made for resurveys in this district, I beg leave to submit the following for your consideration, and would respectfully ask your instructions in

relation to the subject.

The diagram herewith enclosed exhibits the districts already surveyed in this State, representing by the yellow shade those districts which have been examined during the past year, and reported fraudulent; by the green, those reported by Wm. A. Burt in 1849; by the pink, the Lynns' work resurveys made the past season, and by the red, the resurveys and corrections made by Wm. A. Burt, Esq.

The district embracing Grand island, although surveyed but a few years since, has been found, upon thorough examination (as will appear by reference to the copies of the field-notes of these

135 examinations forwarded to your office), to have been done in a very imperfect and fraudulent manner, and it is thought important that these surveys should be corrected during the coming season. It is important also that the defective surveys in the Lower Peninsula should be adjusted in some way; either by an entire resurvey, or, as has been done by Judge Burt in the Nicholson contract, by re-establishing and correcting the old surveys as far as practicable, and where any part of the original survey is

wanting, supplying the deficiencies by new work.

The latter method is preferable, and perhaps indispensable, where sales have been made in a township, but in other cases where the old surveys are very defective and the lines and corners much out of place, it is believed an entire new survey should be made without reference to the old work, except to mention such porions of it as came within the observation of the deputy making ${f a}$ survey, for the expense and labor of re-establishing and correcting old lines is found to be nearly, if not quite, equal to that of making

an entire resurvey. The office work, on account of these fraudulent surveys, is in an unsettled and unfinished condition. Some of the records and transcripts of the field-notes of these defective townships in the Lower Peninsula have been made, but of late all office work in these defective districts, and indeed in all the Lower

Peninsula (except the resurveys), have been suspended.

The instructions contained in your letter of the 22nd August, 1848, in relation to resurveys, say: "No such account (accounts for resurveys) can be reported by this office without the clearest and most ample testimony from disinterested sources of the fraudulent character of the work. Hence these cases must be accompanied by such testimony, and in the future, before ordering a resurvey in any case, you will confer with this office, and furnish a copy of the evidence before you as to the character of the original work."

In compliance with the above instructions, therefore, I submit the following proposed plan for resurveys for the coming season, the evidence in all the cases having been furnished in the reports and field-notes of deputies who have made

examinations:

First, it is proposed to resurvey or correct the surveys in the Grand Island district, and to complete the resurveys near Grand Traverse bay. Secondly, to proceed with the other fraudulent districts, as far as practicable, with a view to the completion of all the unfinished surveys, so that the office work connected with the survevs in the Lower Peninsula may be completed.

In the instructions from your office of the 17th October last, it is suggested that no township should be subdivided where the greater part of it is unfit for cultivation, unless it contains valuable

mineral.

It is not always easy to determine the character of a township before it is surveyed, and there are few instances where the greater part of a township is unfit for cultivation in the surveys yet to be made in this State, except in the mineral region. The district of 24 townships mentioned in my estimate for surveys the coming season, however, judging from the returns of the surveys in that vicinity, may be to some extent of the character mentioned, but it is thought proper to complete the survey of these townships during the present season, so that there may be no impediment in the way of carrying on and completing the office work in the Upper Peninsula.

When those surveys are completed there will be no interruption in the Upper Peninsula surveys as far as range 21 west, and if all the surveys contemplated are completed during this season, there will be less than 80 townships remaining unsurveyed in that portion of the State.

Very respectfully, your obedient servant,

CHARLES NOBLE.

Surveyor General.

J. Butterfield, Esq., Commissioner.

Endorsement: See instructions to surveyor general, June 25, 1851.

137 After like offer, objection, ruling and exception, defendant's counsel read extracts from the reports of Commissioner of the General Land Office and surveyor general for the year 1851 as

EXHIBIT 78.

Report for the Year 1851.

Page 12 (from Commissioner's report):

"The rectifying of the defective and fraudulent surveys heretofore reported to Congress, and for which the necessary appropriations have already been made, together with the survey of the islands of Saginaw bay, Lakes Huron and Michigan, will be the concluding work in that district prior to the closing of the surveyor general's office, which shortly thereafter may be expected under the act of 12th June, 1840. The correction of the defective surveys alluded to is a work designed to be performed with all the precaution necessary to protect the interests of purchasers interspersed throughout them, and to make the old lines and corners available wherever found.'

And on page 18:

"The execution of the law granting the swamp and overflowed lands unfit for cultivation to the States respectively is occupying great attention. So far as these lands lie within the districts over which the surveyors general exercise jurisdiction, I beg leave to refer to their reports in regard to the action thus far. In numerous instances, it is found difficult to accurately detect, from the plats and field-notes of survey, the precise lands assignable to the State under the grant.

"Whenever the selections in any one land district shall be completed and closed, and the lists finally approved, and not before, it is designed to issue the patent required by the act; and any lands

previously sold or otherwise disposed of, prior to the date of approval of the lists, will be rejected and excluded, in accordance with the views recently expressed by this office, and which have received the sanction of the department."

Page 50:

"In giving out contracts the present year, special reference was had to the completion and closing of the surveys in the Upper Peninsula at an early day, nothing remained to be done in this State but the resurveying of such districts heretofore reported to this office as fraudulent, as the department may think proper to authorize."

Page 51:

"The appropriation of last year, and the balance of the appropriation of the year previous, for resurveys, is unexpended, in consequence of instructions from the General Land Office, growing out of certain suits commenced, under direction of my predecessor, against deputies supposed to be implicated in the frauds committed in the public surveys, which suits are yet undetermined."

"Exclusive of these contracts now under adjudication and those

14 - 331

now resurveying under your instructions the present season, embracing a few townships near Grand Traverse bay, it is not known to this office that any pressing necessity exists for further resurveys, but it is deemed of the greatest importance that such resurveys as are necessary to be made in this district should be ordered with as little delay as practicable. Whether the suits instituted against the deputies before referred to are finally determined in the favor of the Government or not, it is important to the Government, as well as to the settlers, that the lines be run and so defined that the purchaser will be enabled, without difficulty, to find his land.

"It is undoubtedly true that, in much of the country above referred to, no reliable lines can be found, and the purchaser, under the existing state of things, must be subject to needless trouble and endless lawsuits, if finally left by the Government in its present

condition, and it is believed that for all these purposes, the appropriations already made by the last Congress for resur-139 veys, in addition to the unexpended balance of former ap-

propriations, will be ample and sufficient if it can be applied to these objects, and it would seem that the public interest in this regard should not be prejudiced, nor the resurvey so necessary to the settlement of the country delayed in consequence of these jurisdictional proceedings, which, however determined, can make no less important the necessity of the speedy completion.

The injury to the Government in consequence of the frauds committed in the surveys in this State, consists not only in the pecuniary loss on account of the surveys, but in the false reports of the character of the country, some of the finest portions of which being represented in the original surveys as indifferent, second and third rate land, and sometimes swamp, have been rendered unsalable for many

vears.

"The accompanying paper, marked 'E,' contains the description of certain townships copied from the field-notes of the original surveys, and descriptions of the same townships from the field-notes of the resurvey. These are instances where the original surveyor traversed the country and must have known their true character, but other cases might be cited where it is known that the deputy who reported the original survey was not upon the ground, and his report, therefore, being an entire fraud, was not worthy of comparison."

Page 53:

"Considerable progress has been made in preparing a list of the swamp lands, under your instructions of 21st November last, in accordance with the act of Congress entitled, 'An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits,' approved September 28, 1850. Some time was consumed, however, before this work was commenced, in corresponding with the authorities of this State on the subject of the manner in which these lands should be located, and more on account of having to compare and correct a large share of the plats in this

office by the original field-notes. There is much yet to retard the rapid progress of this work, as the swamps in this

State generally do not lie in large connected tracts, but are scattered throughout the townships, involving the necessity of laying off almost every section into forty-acre lots, after the boundaries of the swamps have been defined in accordance with your instructions. This labor is attended with many perplexities, as it very frequently occurs, either on account of the carelessness and inattention of the surveyor, or from some other cause, that but one intersection of a swamp is noted, and sometimes the intersections are so intricate as to render it impracticable to apply the rule laid down in your instructions, while in other cases, where a swamp is entirely isolated, there seems to be no other way of defining the boundary properly except by a survey."

After like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 79.

Surveyor General's Office, Detroit, Feb'y 10th, 1852.

Sir: Your letter of the 25th Nov. last, requesting me to "prepare a plan of operation," etc., in reference to the resurveys of this

State, was duly received.

I have prepared a diagram, which is berewith forwarded, representing the townships that have been resurveyed, with those districts that have been officially reported as fraudulent or defective, but as much has already been said in reference to this subject, and especially in relation to the value and importance of the country in which these defective surveys are situated, it does not appear necessary to recapitulate the reasons which have been urged for the rapid prosecution of the work of resurvey. A very interesting report has been submitted to this office, however, which contains much valuable information relative to the extent and resources of that

region, a copy of which I enclose herewith.

141 The plan which it is proposed to pursue in the prosecution of the resurveys, should they be ordered without reference to the suits that are pending before the U.S. court, will be substantially the same as proposed in my letter of 5th March last. It may be thought desirable, however, to exclude the Higgins district in the Upper Peninsula from resurvey the present season, and carry on as far as possible to completion the resurveys in the Lower Peninsula, beginning with the district west of Saginaw bay as of the first importance—it being situated in a country where the sales are constantly making-and continuing with the districts nearest Grand Traverse bay until all are completed. If the surveys in the Northern Peninsula are carried on as proposed in my estimates, it may be necessary to enlarge, to some extent, the field force of this office, and it will be necessary to do so if the programme of rules proposed by you, enclosed with your letter of 25 June last, are to govern in the further prosecution of the surveys. These rules seem to be of a restrictive character, and intended to correct or remedy evils heretofore practiced in executing the resurveys, but it does not appear that the practice of this office has been in conflict with the principles therein contained. On the contrary, the precautions which

belong to the faithful performance of this important service have been, it is believed, as far as possible enforced. Nevertheless, experience has taught, particularly in this service, that no instructions, however minute, can meet the exigencies of every case, and much has to be left to the wisdom, judgment and skill of the

The employment of codeputy surveyors in these resurveys, where the common compass exclusively is used, involves some practical difficulties, and, it would seem, does not meet the objects designated, for in the region proposed for resurvey, the preliminary examination having been made (and no resurveys could be ordered in the absence of such examination), the appointment of codeputies upon the same contract would be merely assigning portions of the same contracts to each deputy, not increasing the testimony as to

any particular part of the survey, for it could not be expected that both deputies will work upon the same lines, nor even in the same township, perhaps, for this would multiply field books and involve perplexity in the returns, which has already, in some of last year's surveys, been a source of some annoyance to this

In the mineral region, where the solar compass is used, it is necessary to improve the time during fair weather in running random lines, otherwise much time would be lost when the sun could not For this reason the employment of an assistant deputy or random-line surveyor may facilitate the field operations of the contracting deputy, and secure, perhaps, more perfect work on the Nevertheless, in accordance with your instructions, this practice has been discontinued in the surveys of the past year, and each deputy has performed his surveys in his own proper person.

The design of this office has been to disconnect the examinations from the resurveys; and although the expense of the Government has been somewhat increased, yet no resurveys could be ordered without such preliminary examination, nor could it be expected that a deputy would enter the field with the expectation of receiving no compensation for his examinations unless he were assured of sufficient work in the resurveys to compensate him for such extra

Moreover, the maximum price allowed for resurveys, six dollars per mile, would hardly be sufficient to cover all the expenses without reducing very materially the price for resurveys. Where the districts are situated near the coast, the maximum price has not been allowed, but in the interior, where much extra labor is required in packing, etc., it is believed six dollars a mile is no more than a fair compensation, including, of course, the necessary examinations which are required in each township to ascertain what course should be pursued in its connection.

One great cause it is more generally believed, of the imperfections and irregularities in the old surveys in this State, is the inadequate compensation granted for such services; and in order to secure good work on the ground, some allowances 143

should be made for accidents and difficulties which frequently

occur in the field, consuming the time of the deputy, and (if his compensation is small) compelling him to perform his work hastily, and perhaps imperfectly.

If further examinations of surveys are deemed necessary therefor, aside from such as one made by the resurveying deputies in each township, I would still recommend that they be disconnected

from the resurveys—new surveys—as an entire resurvey.

In reference to such townships as contained lands that are occupied or sold, I would suggest that instead of respecting the corners which define such lands in townships where the surveys are defective or fraudulent (for the location of these lands has usually been made and the boundaries defined by county surveyors), the resurvey of the township be made according to the regular form recognizing these sales as private claims, surveying their boundaries to the satisfaction of the owners, and closing the lines of the new survey upon them in the same manner as upon the Indian reserves, etc.

The general instructions to the deputies of this office refer especially to the designation of corners to be established in resurveying, and are sufficient for the government of the deputy in any regular survey; but special instructions are always necessary, and must be specific in proportion to the character of the survey and the expe-

rience of the deputy.

These general remarks are submitted for your consideration, and may be regarded as exhibiting my plan of operations for the resurvey of the present season, and the instruction proposed for the government of, and this would be much more satisfactorily accomplished, as recommended in my annual report, by the appointment of an inspector of surveys. This matter is all before your department, however, and is left for your decision and instructions.

The returns of some of the deputies exhibit great defects in some of the township lines, and however necessary it may be " to 144

respect and retrace them," yet it frequently becomes necessary to supply material deficiencies, and even to change the position of some of the boundaries, which would, if established, entirely destroy the "connectedness" of the surveys. It would therefore appear that in any of the defective or fraudulent surveys the marks of the original survey should not be respected, but obliterated, making entire new surveys of such districts and connecting them with the adjoining regular surveys so as not to interrupt the regularity of the townships and ranges. But in townships in which sales have been made, where any portion of the original survey can be found, it may be desirable that it should be respected and established; and yet the remeasurement and re-establishment of old lines require more time and labor and involve as much expense, when such lines have to be connected, with deputies entrusted with the work.

I am, sir, very respectfully, your obedient servant, CHARLES NOBLE.

Surveyor General.

J. Butterfield, Esq., Commissioner General Land Office, Washington, D. C.

Endorsed: See letter of instructions to the surveyor general bearing date 8th March, 1852.

The report referred to is as follows:

Copy of a Report Made by A. S. Wadsworth, Deputy Surveyor, on the Character of the Country Between Grand River and the Straits of Mackinaw, Michigan.

Detroit, December 24th, 1851.

Hon. Charles Noble, surveyor general:

I would offer the following report, having reference to the unsold

U. S. lands in the northern part of this peninsula.

In locating and surveying Indian lands within the last four years from Grand Traverse to the straits of Mackinaw, along the lake shore and also by the Cheboygan valley from Little Traverse bay, and having the present season been twice from Saginaw to Grand 145

Traverse and from Grand Traverse to Grand river, I shall offer such information as I have derived from personal ob-

This entire section of country has until recently been considered low, level and swampy, with pine, cedar, balsam and hemlock ridges, cold, sterile and unfit for cultivation. The furthest possible from this are the facts in reference to this region. From Saginaw northwest, the first 30 miles along the Tittabawassee river the country is rich in soil and timber. After passing the mouth of Tobacco river we enter an extensive swamp that extends northeasterly towards the Huron shore, and is from 12 to 15 miles in width, with an occasional ridge of beech and maple lands. Continuing northwest, we enter pitch-pine plains, dry, sandy, and elevated; this, with an occasional belt of white and Norway pine, continuing to Houghton lake and past the headwaters of the Muskegon river. The character of the country at once changes as we descend the western slope. Instead of light and sandy soil, we here find a rich black sand and gravelly loam, supporting a heavy growth of sugar maple, beech, elm, lynn, etc., with every requisite to warrant an agricultural settlement. The country being more elevated than in the southern part of the State, gives rapidity to the numerous spring brooks and streams which water this extensive region. After attaining sufficient size for hydraulic purposes, these streams become still more rapid, affording an incalculable amount of water power. This is true of the White river, Muskegon, Pere Marquette, Sable, Platte and Elk rivers. The Cheboygan river is less rapid. with a deep, strong current. Leaving the straits of Mackinaw south, the first 20 miles is unequal. In the Cheboygan valley is good farming land, but between this and the "Village of the Cross," westerly near Point Wah-go-shaw, much of the country is broken, hilly and swampy. After passing the head of Little Traverse bay, we enter an extensive tract of superior farming land, extending 50 miles to near the head of Grand Traverse and easterly to near the

meridian, of 1,000,000 acres area after deducting the inland lakes. These lakes, to wit, Bear lake, Walloon lake, Elk lake, and Lake Was-wah-go-mink, with others, are navigable, affording salmon, trout and whitefish in abundance, their waters clear as crystal, and forming considerable streams as they debouch. Near the head of Grand Traverse bay is a belt of pine land, extending southeasterly, of four townships. On the 24 November last we left the Grand Traverse bay to open a trail 100 miles to Muskegon, on the range line between ranges 11 and 12 west

From Grand Traverse south the first 50 miles is unsurpassed (as a road route), there being in the distance less than 50 rods of swamp, through sugar-maple groves and elm intervals, soil a black sand and lime gravel, with decaying vegetation; in some places,

clay springs and streams numerous.

This last-named 50 miles, assuming a breadth of 30 miles on either side, has an area of 1,920,000 acres, nearly all of which is susceptible of settlement. This description is applicable to the country between Grand Traverse bay and Lake Michigan, and to

the peninsula within the bay, embracing 192,000 acres.

The last fifty miles on this range line is pine land, with beech and maple, having less than one mile of swamp. On the White river, west of this line, are eight townships of beech and maple land. It is estimated that at least two-thirds of this last-named 50 miles is first-rate farming land, which gives 1,280,000 acres. recapitulate:

Lands east of Grand Traverse bay	1,000,000
The state of Change I have the	Transference
and the soul falled fille.	7 63-161 616161
Lands in the vicinity of the Cheboygan	500,000
Total	4.892 000

This gives nearly five million acres of unsold desirable farming land, without estimating pine land or the farming lands on the eastern slope and along the Huron shores.

The country from Grand river to the straits of Mackinaw. is clearly a limestone region. An outcrop of this rock is 147 found at Grand Rapids, at Muskegon, on the Pentwater river, at the mouth of Grand Traverse bay, and at many places on the coast from thence to Little Traverse bay. Shell mail is also found in great abundance at Grand Traverse, and shell petrifaction to an unusual extent in the lime rock.

The climate at Grand Traverse bay is similar to the New Eng-

land States, but milder than in a corresponding latitude.

The finer kinds of fruit succeed well at the Traverse bay without protection. Six bushels of peaches were gathered this season from four trees four years old from the pit, and the English cherry trees from the Buffalo and Cleveland nursery have wintered successfully. The Indian apple orchards, which are quite extensive in this region, have bore abundantly for the last four years. corn crop (this year light) is there considered a sure crop.

Respectfully submitted.

A. S. WADSWORTH, Deputy Surveyor.

After like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 80.

GENERAL LAND OFFICE, March 8th, 1852.

Chs. Noble, Esq., sur. gen., Detroit, Mn.

SIR: I have to acknowledge the receipt of your communication of 10th ult., by the hands of Mr. Frost, your chief clerk, on the subject of the resurveys in Michigan, which it is designed to undertake the coming season.

The surveys about to be undertaken will be designed to remedy

two classes of defects and frauds.

First class-Incomplete surveys. Where a portion only of the lines in a township is found to have been actually surveyed, and wherein some lines have been run & some corners estab-

lished, which lines and corners can now be found. That portion of such original surveys which shall have been determined to be thus available by retracing the same, is to remain undisturbed, & be respected, whether there have been sales made therein or not, and the residue of such township must be surveyed as if originally, but made to connect in all particulars with the former.

Second class-Fraudulent surveys. Where there is no evidence found in the field of any good intent on the part of the deputy surveyor to comply with the terms of his contract, no system being manifest in the field-work, & an entire absence of marks & monuments whereby to designate the corners, & where no lines are trace-

able.

In this class of cases the lines will have to be run & corners established, as if originally, and all the old irregular lines & corners must be most carefully & thoroughly obliterated, but their connections with the true survey must be taken & exhibited in the notes so that they may be represented on the township plats & thus be never likely to mislead, but in cases where, amongst such irregular surveys, there has been any tract of land sold which is settled upon & occupied according to the irregular lines of the original survey, if the same are found, they are to be particularly respected, prorided the occupant insist on having the same preserved; but in case he shall not so insist, then, with his expressed written consent, duly attested, the deputy surveyor may disregard such old irregular lines, and establish new & regular lines as the boundaries of such section.

But when an old irregular section corner is insisted on being maintained by the occupant of the tract, such, as a necessary conse-

quence, will have also to be respected as governing the boundary of the adjacent sections, the lines of which will close on such corner. The marks on all such "bearing trees" as are not adopted, must be effectually & indelibly obliterated, and the new "bearing trees" will of course be marked with the usual initials N. B. T.

The work must be inspected before payment therefor. 149 The inspection will be to satisfy the surveyor general that the work has faithfully & effectually been executed. The marks at the corner boundaries, here and there, to sufficient extent, are to be inspected. The facts that the marks on the old "bearing trees" which are not adopted in the resurvey, have been effectually obliterated, is to be inquired into. All this is to be done to such extent as shall produce entire satisfaction as to the general character of the Such examinations should be so timed as to commence about the time when a contract is so far executed that the examination

will conclude shortly after the surveying is finished. Such inspections are regarded as an expense incidental to the service, and will have to be paid for by a per diem allowance. You are requested to estimate the minimum allowance per diem, including all expenses, at which such examinations can be made, and

submit the same for determination by the department.

I am very resp'y, your ob. s't,

J. BUTTERFIELD.

Commissioner.

After like offer, objection, ruling and exception, defendant's counsel read extracts from the reports of the Commissioner of the General Land Office and surveyor general for the years 1852 to 1858, inclusive, as

EXHIBIT 81

Report for the Year 1852.

Page 74 (from Commissioner's report):

"I beg leave to call your attention to the interesting reports of the several surveyors general herewith submitted, showing succinctly the extent of the operations of that branch of the service

150 during the past year, the present condition of their districts,

and surveys proposed for the ensuing season.

"Their office labors, it will be perceived, have been rendered extremely onerous by the selection of the swamp and overflowed lands and examinations in relation to erroneous and defective surveys. The adjustment of the grant of swamp and overflowed lands has progressed slowly, notwithstanding great diligence and activity in the force engaged on it. The selection of the lands embraced by these grants were entrusted to the surveyors general of several States where those offices existed, and to the registers and receivers of the land districts in those States where the office of the surveyor general had been abolished. * * * It was well understood that many of the lands had been surveyed in dry seasons or when the ground was frozen, and hence the field or descriptive notes

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would not indicate all that were of the character embraced by the In cases of this kind the officers were authorized to receive and act on such responsible and reliable testimony as should be produced by the authorities of the States. No reports have yet been received from some of the officers, though urged repeatedly to hasten

their action, that the grant may be closed.

"Much difficulty has also been experienced because of the numerous conflicts that have grown out of this grant. The suspension of the sale and disposal of all the public domain was not contemplated by these laws, and could not be made unless specially directed by Congress; and hence numerous entries and locations have been made of lands claimed by the States under these laws. The grant took effect from the dates of the acts making it, and therefore, in numerous cases, conflicts of title arise which have to be adjudicated by the department. To relieve this difficulty as far as practicable, I suggest that where such lands have been purchased, authority be granted for paying over the purchase-money to the State on a relinquishment by the governor, or other official appointed by him

for that purpose, of all the right of the State in and to such lands; and where those lands were located by warrants and scrip, to authorize the State to locote a like amount elsewhere

upon a similar relinquishment.

Exclusive of this difficulty, however, the labor in adjusting these grants is very great, as all the lists returned have to be carefully compared with the tract books; all selections where the land was disposed of previous to the passage of the laws annulled, and those since, suspended. All the selections are then posted; lists of them are prepared and sent to the land offices, and also to the governors, with diagrams exhibiting the lands embraced by the list; and, on the request of the governor, the patents are then issued."

Annexed to the report or schedules; among others, Schedule G, as follows .

"Estimates of the appropriations for the surveying department for the fiscal year ending June 30th, 1854.

"To defray the expenses of examining and correcting old, imperfect, and defective surveys in the northern part of the lower peninsula of Michigan.....

And on page 158 (from surveyor general's report):

"The labor of making up and copying the lists of swamp lands has been much greater than was at first anticipated. Difficulties were encountered, growing out of the imperfect condition of the records and plats, occasioning much trouble, and adding materially to the labor necessary to complete the reports. The lists, with the annotations of the registers at Kalamazoo and Ionia, have already been forwarded to your office. The other lists, as has been stated in late communications from this office, have been completed and forwarded to the registers at Detroit, Flint, and Sault Ste. Marie. The register at Flint has returned the list for the Saginaw district,

with his annotations, and it will be forwarded to your office as soon as some discrepancies, which have been noticed, are adjusted. The lists of the Detroit and Lake Superior land districts have not yet been returned. There will yet be considerable additional labor

connected with these lists when the plats of new surveys are completed. The resurveys of the past season, some of the 152 townships of which are situated in both the Grand River and Saginaw land districts, will require new lists, in conformity with your instructions of the 4th ultimo. These lists, which will be supplemental, will be made up as soon as practicable after the

plats of the resurveys are made."

Page 159:

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"Under instructions from the Commissioner of the General Land Office, two contracts were made in April and May last, for the resurvey of fifty-nine townships situated in the Lower Peninsula, north of the 3rd correction line, * * * thirty-nine townships have been completed, and the field-notes of thirty townships returned to this office, and twenty townships still remain; most of which are in progress of survey, and it is hoped will be completed and notes of them returned to this office previous to January next. The work which has been finished has been executed in a manner highly satisfactory, and fully confirms the opinions heretofore expressed in former reports from this office, that much of the country heretofore represented in the original surveys as indifferent, second, and third-rate land, and swamp and lake, is proven, by the resurveys, to be among the choicest land in the lower peninsula of Michigan. And the increased number of acres in some townships made by the resurvey will be more than sufficient when sold to defray all expense of their resurvey, besides adding confidence and certainty to the titles of the settlers, and the saving of an almost endless litigation. In some instances, in the original survey, lakes, covering many hundreds of acres, have been laid down upon the maps where none existed, thus covering with water a large area of beautiful country, which, but for these frauds, might long since have been opened for sale and settlement.

"There are upwards of sixty townships, situated east of the meridian, which have been reported fraudulent, and no doubt exists in reference to the bad condition of the surveys. * The old districts of subdivisions situated east of the meridian and north

of the third correction line have been partially examined, and there is reason to believe that the surveys therein are, to

a great extent, fraudulent. Errors and frauds in the surveys west of the meridian and north of the third correction line are, from time to time, detected and reported to this office by the inhabitants"

Report for the Year 1853.

Page 74 (from Commissioner's report):

"The delivery of patents has been retarded to a considerable extent by the adjustment of the swamp-land grant, in which much

difficulty has been experienced, owing to its great extent, the imperfections of the field-notes of the early surveys, the numerous conflicts that have risen, and the complexity of the questions in-These difficulties are being overcome by the regulations volved. prescribed for the adjustment of that grant, the promptitude and energy of the governors and other officers of the several States, and the able and efficient action of the surveyors general and district land officers. That the States may obtain all the benefits contemplated by these acts as heretofore construed, the regulations require that such of the public land, at the passage of the law, as is shown by the field-notes, or proved by competent testimony, to be of the character specified in the grant, shall be certified to the States as their property. Further legislation, however, will be required to facilitate the final adjustment of this grant, and will be recommended under its appropriate head."

"The arrangement of the swamp selections has also materially interfered with the adjustment of the recent railroad grants, for the reason that all lands of the class first mentioned being embraced in a law of previous date to the other, had to be ascertained before selections could be made understandingly for the railroads."

154 Page 115:

Estimate of appropriations for the surveying departments for the fiscal year ending June 30th, 1855.

" For continuing the examinations and corrections of old, imperfect and defective surveys in the lower peninsula of Michigan, north of the third correction parallel, and east and west of the meridian, being fortyeight townships, at a rate not exceeding six dollars per

. . \$20,160 "

Page 116 (from surveyor general's report):

"The sum of \$5,000 having been appropriated for the examination and correction of original surveys in the Northern Peninsula, I appointed for that service George H. Cannon, Esq., a deputy who has ever been found to be energetic, capable and honest in the discharge of the duties with which he has been intrusted by this office. The district assigned to Mr. Cannon extended from range one to eighteen west. He was instructed to make such examinations, in each contract, of the original surveys within these limits, as would enable him to report upon the general accuracy and character of He was more particularly instructed, however, to first direct his attention to the examination and correction of a district contracted for survey in 1851, by William Hemmingway. Hemmingway made his returns to the office in the usual form; but in the platting and inspection of his field-notes, defects were found of such a character that explanations were required of him in reference to them; which, not proving to be satisfactory, it was thought to be judicious to suspend his account until the accuracy of his survey could be tested upon the ground. Orange Risdon, Esq., one of the oldest and most experienced deputies of this office, was accordingly instructed to repair to the district for that purpose. Mr. Risdon reached the field and began and prosecuted for a few day his work, when, having the misfortune to lose the needle to his compass, he was compelled to relinquish it, the season being too far ad-

vanced to permit of supplying his loss and of returning to 155 Enough was elicited from Mr. Risdon's report, however, to more strongly confirm the suspicions that had been entertained of the imperfect, defective and fraudulent character of Mr. Hemmingway's survey. Under such circumstances it was thought proper to instruct Mr. Cannon to make a careful examination of the whole work, and if any portion should be found to be fraudulent to such an extent as to require a new or resurvey, to make such resurvey; but where found to be only defective in part, to supply such defects-in short, to do what might be necessary to render the whole survey perfect and complete. Mr. Cannon has just returned from the field, with the notes of the resurvey and correction of four of the After completing the work of four towns, the work was townships. of such a complex and undecided character, that he considered it advisable to consult with this office before proceeding further. In the townships resurveyed and corrected, portions of the lines were run and found to be established; other lines were run, but seemed never to have been corrected, while other portions of the survey were found to be entirely fraudulent, no lines ever having been run. the corrections and resurvey, whenever the original lines were, in the main, found to be sufficiently accurate to be evident that their adoption would not be a source of difficulty hereafter, they were adopted, with such corrections as were necessary, it being thought best to avoid, as far practicable, a multiplicity of marks and lines upon the ground, which might hereafter tend to produce annoyance and confusion. Examinations in the remaining townships in this district were made to a sufficient extent to show that a resurvey and correction will be necessary; and Mr. Cannon will be instructed to again repair to the field as early in the spring as practicable, for that purpose, and to make the additional examinations that he has this season been compelled to omit. So much time was consumed in making the examinations in this district, that but little time was found in which to inspect other surveys. Partial examinations were made, however, in a district surveyed by Francis Coleman, 156 and one surveyed by George E. Adair, in both of which the work was found to be fairly done. In the Lower Peninsula, ten townships that were included in last season's contracts for resurvey were left unfinished. These townships were recontracted, and nine of them have been completed, and the field-notes of seven townships returned. It is expected that the survey of the remaining townships, together with the field-notes not yet received, will be

returned in a few weeks." Page 118:

"An inspector of surveys was appointed for the purpose of making examinations of the original surveys in several districts situated north of the third correction line and west of the meridian. The returns made to this office, as the result of such examinations, show

that the surveys in all of the districts examined are, to some exten defective, and in two of them-one surveyed by James H. Mulle and the other by John Hodgson-so much so, that an entire r

survey will be necessary."

"The examinations in the four districts embraced in my presen estimate represent that in many of the townships no lines have eve They also serve to show, as all examinations of defect ive survey in this State have ever done, that the field-notes of th original surveys are no index to the true and real character and value of the country of which they purport to give a faithful de Instances are numerous where valuable agricultura and pine lands are found to exist in place of what has been reported as dense, and in some cases, impassable swamp or nearly worth less lands. This fact alone renders it a matter of importance to the Government to take such steps as will enable the lumberman and the agriculturist to become not only better acquainted with the character and resources of the country, but to also afford them an opportunity to purchase, and to determine the position and location of their lands. Where valuable lands and timber have been represented as worthless swamps, it is only necessary for the Government to make known the true character and value of such

157 lands, and to offer the needed facilities for determining their location, to be amply repaid for all the expense they will incur in such work by the increased sales they will thereby be

enabled to make." Page 119:

"The settlers and purchasers have from time to time represented to this office that in many cases the public surveys could not be found, and they were unable to identify and determine the locations and boundaries of the lands they had purchased, and that the amount of sales by the Government was seriously affected by the absence of, and worthless character of, the surveys. There are two districts, embracing 17 townships, situated in the Lower Peninsula, not included in my present estimates, that it is known will be required to be resurveyed. There is also a district of 18 townships, situated immediately south of the third correction line and west of the meridian, that, it is feared, on examination will also show should be resurveyed."

"It is contemplated to make an examination of this district, with

a view to ascertaining the true character of the work."

There is attached to the said report Schedule I, as follows:

Estimate of appropriations required for continuing the resurvey in the lower peninsula of Michigan for the fiscal year ending June 30th, 1855, to wit.:

For the resurvey of thirty-six townships north of the third correction line and east of the meridian, and twelve townships north of the third correction line and west of the meridian-in all, forty-eight townships, averaging seventy miles each, at a rate not exceeding \$6 per mile....

Report for the Year 1854.

Page 9 (from Commissioner's report):

"The surveyor general of Michigan has successfully overcome most of the difficulties incident to the fraudulent surveys heretofore made, and is pursuing the only plan by which the evils resulting

therefrom can be remedied.'

158 Page 57 (from surveyor general's report):

"I have estimated for resurvey and correction thirty townships situated in the Lower Peninsula, all of which have been examined, and the condition of the original work in them has at different times been communicated to your office. I have, in addition to these thirty townships, estimated for the resurvey and correction of a district of about thirteen full townships in the Upper Peninsula. In estimating for resurveys I have endeavored, as far as practicable from the information that I can derive upon the subject, to select from among those towns that it is known need to be corrected such as will most benefit the public to have resurveyed first. As a brief statement of the general character of these defective and fraudulent surveys, together with the necessity existing for their speedy correction, was made in my last annual report, it is perhaps unnecessary to again lay the facts there stated before you. Experience has shown that those remarks are, and will continue to be, applicable to all resurveys that it may be expedient to undertake in this State. It will be necessary to make other resurveys than those now estimated for, but they have been left for another season, as I believe the true policy in carrying on this work to be to undertake no more than can be contracted to deputies whose experience, etc., have been tested and approved." Page 58:

" The making up of the lists of swamp and overflowed lands within this State, with the exception of a few townships, the surveys of which have but recently been approved, has been completed, unless it should be thought advisable to make out new lists of such townships

as may hereafter be resurveyed."

Page 65:

Estimate for resurvey in the Lower Peninsula for the year ending June 30, 1856, \$10,800.

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Report for the Year 1855.

Page 184 (from surveyor general's report):

"After being advised of the passage of the act of August 4, 1854, making an appropriation for continuing the resurveys in this State, I immediately, notwithstanding the lateness of the season, offered contracts to several of the most efficient and experienced deputies of this office, with a view to press forward to completion the resurveys for which that appropriation was made, and for the further reason that I desired to make full the usual progress in, and to complete, field-work, by giving employment only to such deputies

as had satisfactorily proved to the office their capacity and integrity. Owing to the near approach of cold and boisterous weather, and to the fact that most of them found it impracticable to leave their business without more timely notice, I was only able to make a contract with Mr. George H. Cannon, for the resurvey of a district of seventeen townships and fractional townships before the setting in of winter, and the close of navigation would make it necessary for him to leave his work until the opening of the following spring. Unusually cold and continuous rains, together with sickness and death in his party, compelled him to abandon his work after resurveying one full and one fractional township. As early in the spring of 1855, as it was practicable to enter the field, Mr. Cannon resumed his work, and contracts were made as fast as practicable with deputies of experience, for the resurvey and correction of fifty-six townships and fractional townships. All entered upon their duties, confident that their long practical experience and familiarity with the character of the work to be performed would enable them to complete their several contracts prior to this date."

Page 186:

been obviated.

"It has been usual for the department to furnish lithograph diagrams of the State, representing the work as reported by this office for a previous year. Upon these the work of a subsequent year could be marked, bringing it up to the date of the report of which it was returned as a portion. The resurveys have canceled all the old office work that may have heretofore been done in such townships, consequently they erroneously represent the real condition of office labor in those towns. It being impracticable to correct these diagrams and cause them to represent the present condition of the work in the office, I have prepared an entire new map

1.

of the State, by which means the errors of the old diagram have

Statement and Estimate of Uncompleted Field-work in the State of Michigan on the First Day of December, 1855, Exclusive of that under Contract, as Represented by Statement A, Accompanying this Report.

Townships.	Ranges.	Character of work.	No. of town- ships and fractional townships.	Remarks.
*	#	*	*	It is interest to
46	*	#	46	It is intended to contract all
#	9	*	*	this work as fast as appro-
49	*	4	46	priations will admit, and
18, 19 and 20 north.	1, 2 and 3 west.	Resurvey	9	experienced and reliable deputies can be found to
*	*	46	*	undertake surveys of the
*	*	*	96	character of these now re-
	*	*	- 4	maining to be done.

From information just received, it is supposed that the resurvey of about twenty townships and fractional townships now under contract and not embraced in the above list, will necessarily be left until next season.

LEANDER CHAPMAN.

Surveyor General.

Surveyor general's office, Detroit, November 1, 1855.

161

Statement of the Condition, Character, and Amount of Office Work to be Done Prior to the Closing of the Office, and a Transfer of the Records to the State of Michigan,

Character of the work to be performed.			Estimated amount of work.		Remarks.	
*	*	*	*	*	M.	
- 6	*	*	#	#		*
100	*	*	*	46		*
W.	90	*	- 4	4	76	*
the notes of resurve	of the pres	nade from sent season om notes of e hereafter.	tional to	ips and frac- wnships.	Will employ man 280 da	1 draughts- iys.
*	*	*	- 94	40	#	*
**	*	*	*	46	4	*
Making out	in triplica	ite lists of			It is notional	3 (1)
swamp a in towns	hips, of w	wed lands			It is estimate ploy one cle	ed will em- rk 100 days.

LEANDER CHAPMAN,

Surreyor General.

Surveyor general's office, Detroit, November 1st, 1855.

162

M Estimate of Appropriations Required for the Surveyor General's Office Northwest of Ohio for the Fiscal Year Ending June 30, 1857.

Estimate of appropriations required for continuing the resurveys in the Lower Peninsula of Michigan for the fiscal year ending on the 30th June, 1857, to wit:

For the resurvey of seven townships north of the 3d correction line and west of the meridian, averaging sixtyfive miles each, at a rate not exceeding six dollars per \$2,730 00 For the correction and resurvey of eighteen townships situated between the 2d and 3d correction lines and west of the meridian, averaging sixty-five miles each, at a rate not exceeding six dollars per mile. 7.020 00

\$9,750 00

Report for the Year 1856.

Page 207 (from Commissioner's report):

"It has been determined to complete the resurveys of about townships, the greater portion of which are embraced in out-tan ing contracts, to complete the archives, and then close the offic For the attainment of this object, measures are contemplated so to be able to turn over the archives to the authorities of Michigan under the act of 12th June, 1840, by the 30th of September, 1857

Page 240 (from surveyor general's report):

"It is therefore evident that the public surveys in this State ca be brought to a close the ensuing summer. That it may not be it ferred that, in the opinion of this office, no other defective, imperfec or fraudulent surveys exist in Michigan, than those for the resurve of which appropriations have been made, it is proper to state that it is well known that there are several contracts in both the Uppe and Lower Peninsula of this State in which the surveys are in place

defective, and in some cases, audulent; but from the partia examination made, it does not appear that defects and fraud

exist to such an extent as to make a resurvey indispensable as has been the case in those townships for the resurvey of which l have heretofore forwarded estimates. In those districts where it is now known that erroneous and fraudulent surveys exist to some extent, the north and south lines are reported by the examiners as generally run, and the quarter and section posts on them as established, although not in all instances as represented by the original notes. Many of the east and west lines have never been run, but the posts governing them being established, they may be supplied by those who find it necessary to use them."

Report for the Year 1857.

Page 12 (from Commissioner's report):

" Prior to the passage of the act of 3d March, 1857, the adjustment of the swamp grant was greatly retarded by applications filed on the part of individuals to contest the right of the States to the lands selected. That act, by confirming the selections with exceptions, put an end to the individual contests, and the adjustment is now rapidly progressing. The character and extent of the contest then pending appear in the last annual report.

"The recommendation of the last report is renewed, that a limit be fixed to the time within which swamp selections must be made.

"The adjustment of these railroad grants involves an amount of official labor at least equal to the sale of that quantity of land, the surveys to be operated on being a strip thirty miles wide, the route of which road within which previous sales, locations and pre-emptions have to be carefully examined and adjudicated on new rules peculiar to these grants, with a view to equal justice to the grantees, settlers and purchasers.

"The mode of proceeding in this branch of business is as follows: The lands falling within the probable limits of the railroad grant are, upon application, withdrawn from sale or location.

The act of Congress is communicated to the governor of the State: plats of the road are called for, and the general practice has been for the State to accept the grant and transfer the same to incorporated railroad companies. Then the maps of the road, duly certified by the governor under seal, and by the company, are returned to this office, generally on a scale of an inch to a mile, indieating the connection with the sectional lines of the surveys, showing also the exact dates of the survey, and staking off the road on the ground, because from these dates, which must be established by the affidavit of the engineer of the road, the title to the State has legal inception, according to the late Attorney General's opinion.

"If there is a material deflection in the route of the road, an explanation is required, and unless it satisfactorily appears that the line taken is the most direct practicable route between the termini, it is rejected. If the route does not deflect too much between the termini, the map is accepted as the basis of adjustment. of the road is then laid down upon our official township plats, with the six and fifteen mile limits of the grant. Then proper diagrams are prepared for office use in the adjudication of pre-emptions, sales,

bounty-land locations, and swamp selections.

"These diversified interests falling within the railroad belt are required to be examined, their validity or invalidity tested in connection with the State title under the grant. The ledgers or tract books, where all these interests are required to appear, must be posted up to date, and then we begin the preparation of the lists descriptive of the lands which enure to and are to be certified to the State, the indemnity selections being, under the decision of this office, limited to the State to which the railroad grant is made. When the granted lands for railroad purposes are ascertained and reported, then the residue remaining to the Government are to be brought into market, and this it is the purpose of the department

to effect with all practical speed.

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Page 15: " Michigan. The original surveys of the islands in the western part of the Lower Peninsula have been made: 4,095 miles of resurveys have been reported during the past year, and, in obedience to the act of March 3, 1857, the office at Detroit has been transferred to St. Paul, Minnesota, and the greater portion of the archives relating to the public surveys in Michigan have been handed over to the authorities of that State; the remainder, not being in a condition for transfer, were removed to the surveyor general's office at St. Paul, and are now in course of preparation for delivery to the Michigan authorities."

" It is difficult to convey an adequate idea of the labor incident to the management of the railroad business.

"Then, with antagonistic interests to these, we have multitude of settlers, old and new, who crowd along the lines of the roads; purchasers at private sale, pre-emptions upon offered and unoffered lands, bounty land locations, and swamp selections.

"These varied and conflicting interests figure in the adjustment of the claims to the most minute subdivisions of the lands, and require greater care and more labor than are disposed upon their

ordinary disposal."

After like offer, objection, ruling and exception, defendant's counsel read

EXHIBIT 82

SURVEYOR GENERAL'S OFFICE, DETROIT, June 11, 1847.

SIR: Your letter of the 3d ult., instructing me to report to you the quantity of the swamp land, unfit for cultivation, that has been surveyed and returned as public land in each land district,

was duly received, and your instructions shall be complied with as far as practicable. But you are aware that all that can be done is to furnish merely a rough estimate of the quantity in each township, which, at best, can only be an approximation to accuracy.

The old surveys made in this district do not furnish data even sufficient for that; for the extent of the swamps on either side of the lines passing through them, is not noted, either on the plats or in the field-notes.

As the Ohio surveys are not in my possession, my estimates will, of course, be confined to the States of Indiana and Michigan. If not, please advise me, and I will employ Sam'l Williams, Esq., of Cincinnati, to make the estimates for Ohio.

Very respectfully, your ob't serv't,

LUCIUS LYON, Sur'r Gen.

Hon. Richard N. Young, Comm'r Gen'l Land Office.

Ans'd 8 July, 1847.

After like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 83.

GENERAL LAND OFFICE, June 7th, 1853.

Surveyor general, Detroit, Michigan.

SIR: In adjusting the swamp-land selections in the Grand River district (Mich.), a difficulty has arisen in regard to the proper construction of the supplemental list transmitted to this office, dated December 8th, 1852.

In my letter of 4th Oct. last, the following directions were given: "In those townships resurveyed during the past season, it will be

necessary to furnish new lists in explanation of the former ones. but you will be careful to designate them as having been made in lieu of the former ones."

This instruction appears to have been lost sight of, as the supplemental list above alluded to is simply headed "Supplemental 170

list of swamp lands in townships resurveyed and platted up to December 6th, 1852, in the Grand River district, embracing some townships not included in former lists," and no further explanation is given. To illustrate the difficulty, I will state that in township 8, range 2 north and west, the selections in sections 2, 15, 18 and 19 are the same in both the original list and the supplemental list, and cannot be regarded in any other light than as double selections. In section 24, the whole section was included in the original list, which, in the supplemental list, the S ½ of N W 4, N E 1 and S 1 are the selections.

Now, which is to govern, the original selection or that in the supplemental list? In township 9 N, range 2 west, the selections are in sections 1, 3, 4, 5, 8, 9, 10, 13, 21, 22, 26 and 35 in the original list, while those in the supplemental list are in sections 28, 29, 30, 31, 32, 33 and 35.

The questions, as you will perceive from the foregoing, are whether the supplemental list is to be regarded as only corrective of the former list, or whether it is to be taken entirely in lieu of the

original in the corresponding townships.

As the work upon this list has been suspended on account of the foregoing difficulties, I have to request that you will give the matter your early attention, and that you will be explicit in your answer as to the proper construction of said supplemental list.

Very respectfully, your ob't serv't,

JOHN WILSON, Commissioner.

After like offer, objection, ruling, and exception, defendant's counsel read

Ехнівіт 84.

GENERAL LAND OFFICE, July 29, 1853.

Register, Detroit, Michigan.

Sir: I herewith transmit you a certified copy of approved list No. 1 of swamp and overflowed lands selected as enuring to the State of Michigan under the provisions of the act of 171 Congress approved September 28th, 1850, lying within your district.

You will please enter each tract embraced in said list in the proper place on your tract books, as follows: "SE 1 of NE 1, sec. 25, T 2 S, R 1 E, 40 a., swamp-land act 28th Sept., 1850, approved; see list No. 1." You will also note each tract upon your township plats by some convenient marks of reference referring to the words "State, act 28th Sept., 1850," which should be written upon the margin of the plats. This should be done with great care, so as not to injure or mutilate them.

Should you discover any errors, discrepancies or conflictions, you will carefully note and report them to this office, with such explanations as may be necessary to a full understanding of the same.

You will also be particular to advise this office when you have completed the entries above specified, and give as much of your time and attention to this business as the current business of your office will permit.

Very respectfully, your ob't servant,

JOHN WILSON, Commissioner.

After like offer, objection, ruling, and exception, defendant's counsel read

Ехнівіт 85.

GENERAL LAND OFFICE, July 30th, 1853.

SIR: I herewith enclose you a copy of list A, No. 1, of swamp and overflowed lands selected as enuring to the State of Michigan under the provisions of the act of Congress approved September 28th, 1850, lying within your district, which having been disposed of prior to the passage of said act, are therefore rejected.

It is presumed that you have already entered on your tract books from the list here ofore furnished you by the surveyor general, the fact of the selection by him as a way of the selection by him as

172 eral, the fact of the selection by him as swamp lands of the tracts therein reported; you will, therefore, opposite each of said entries, in reference to the particular tracts in the accompanying list, mark the words "Rejected, see list No. 1 A, accompanying letter of Commissioner Gen'l Land Office of July 30th, 1853," so as to show that such portions of the original selections made are not regarded as land enuring to the State under the swamp-land act, the said land having been disposed of prior to the passage of the act making the grant to the State.

You will please acknowledge the receipt of said list, and advise this office when you have completed the entries above specified.

Very respectfully, your obedient serv't,

JOHN WILSON,

Commissioner.

Register, Detroit, Michigan.

After like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 86.

GENERAL LAND OFFICE, Sept. 5, 1863.

Register at Ionia, Michigan.

SIR: In reply to your letter of the 31st ulto., I have to state that the NE $\frac{1}{4}$ of SE $\frac{1}{4}$, and W $\frac{1}{2}$ of SW $\frac{1}{4}$, sec. 18, and N $\frac{1}{2}$ of NW $\frac{1}{4}$, sec. 34, T δ N, R 2 W, Ionia district, are confirmed swamp selections, and will hereafter be approved as such to the State. The E $\frac{1}{2}$ of

S E $\frac{1}{4}$ sec. 23, N $\frac{1}{2}$ of N W $\frac{1}{4}$ sec. 24, and N $\frac{1}{2}$ of S E $\frac{1}{4}$ sec. 30, same township and range, were also selected, but will not be approved, the same not appearing in the subsequent list of the surveyor general, which was to supersede the one previously made. They will not be subject to private entry, however, until they shall have been restored to market in the usual way, their selection, though invalid, being regarded as a withdrawal of the tracts from market.

Very respectfully, your ob't s'v't,

J. M. EDMUNDS, Commissioner.

After like offer, objection, ruling and exception, defend-173 ant's counsel read

Ехнівіт 87.

GENERAL LAND OFFICE, Sept. 19th, 1854.

Leander Chapman, Esq., surveyor general, Detroit, Mich.

SIR: I enclose herewith a copy of an affidavit filed in this office by O. M. Barnes, Esq., of Mason, Michigan, in regard to the character of a certain tract of land entered by him at the land office at Ionia, and claimed for the State as swamp or overflowed land, described as follows: W 1 of N E 1 of sec. 3 T 2 N, R 2 W.

I have heretofore advised Mr. Barnes that if said land is really of the character contemplated by the act, his entry must be canceled, but that, if the field-notes of the survey do not clearly establish the swampy character thereof, he will be permitted to contest the claim of the State thereto, on the ground of its erroneous selections, and introduce testimony in support of his claim.

From a careful examination of the plat and field-notes, I am satisfied that said records do not clearly show that the greater part of each forty-acre subdivision is land of the character contemplated by the act, and if the claim of the State be maintained, Mr. Barnes will have the privilege of contesting the same.

I have to request that you will re-examine the matter, and advise me whether, in your opinion, a valid claim on behalf of the

State can be based upon said plat and field-notes.

Very respectfully, your ob't serv't,

JOHN WILSON, Commissioner.

174 After like offer, objection, ruling and exception, defendant's counsel read

EXHIBIT 88.

SURVEYOR GENERAL'S OFFICE, Detroit, September 27, 1854.

SIR: I am in receipt of your communication of the 19th inst., with accompanying papers relative to the W 1 of the N E 1 of sec. 33, T 2 N, R 2 W, Mich., which tract is embraced in a list of swamp and overflowed lands that has been made and approved at this

17 - 331

office. In determining the amount and locality of the swamp lands, this office has been governed entirely by a circular from your

department, dated November 21, 1850.

Before commencing the work of making up the lists, a correspondence was entered into with the authorities of this State, the result of which was that the field-notes and plats were adopted as a basis upon which the swamp lands were to be determined; those lands have so far been determined upon that basis, and by as judicious and equitable application of the instructions in your circular above mentioned, as practicable. Those instructions state as follows, to wit:

"The following general principles will govern you in making up these lists, to wit, where the field-notes are the basis, and the intersections of the lines of swamp or overflow with those of the public surveys alone are given, those intersections may be connected by straight lines, and all legal subdivisions, the greater part of which are shown, by these lines, to be within the swamp or overflow, will be certified to the State, the balance will remain the property of

the Government."

In the majority of instances, in determining the swamp lands of a section, the above instructions may be fully complied with, in different ways, and with very different results, as may be seen by reference to the inclosed diagram of the section and description in

question.

The course that has been adhered to in making up these lists, where so much discretion must necessarily be exercised, has been to make the connections in a manner that would appear to be most natural and most equitable. In the case in question, there would appear to be three different ways of determining the amount and location of the swamp lands; two of them would make the W ½ of the N E ¼ swamp land, as now given in the list; the other leaves the S W ¼ of the N E ¼ dry land, but this is the most unnatural manner of connecting the swamp, as it throws the E ½ of the N E ¼ out of the swamp lands, when the field-notes state the whole of the east line of the tract to be swamp.

The affidavit of Mr. Barnes is undoubtedly correct, but the fieldnotes of a survey made in 1826 have been taken as a basis to deter-

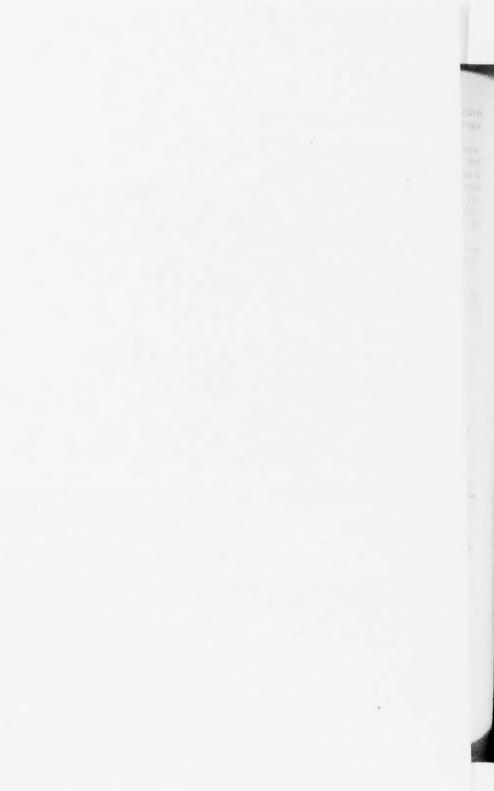
mine whether the tract in question is swamp or not.

It is unquestionably a fact that there are many descriptions of land embraced in the swamp lists that are not now, nor have they ever been, swamp. This must necessarily result from the defective character of any system that can be adopted to determine their location and amount, other than an actual survey of the boundaries of the swamps, which is impracticable. It is not by any means certain that the tract claimed by Mr. Barnes was not swamp at the time of the survey of the township. Thousands of acres in this State are now under cultivation that, twenty-eight years ago, would clearly have come under the meaning of the act of Sept. 28, 1850. The affidavit of Mr. Barnes does not state that the majority of the tract is of a character that it could not, at the time of the survey, have

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been swamp and unfit for cultivation, but merely states that at this

time the land is succeptible of cultivation.

The field-notes will, in many instances, prove a poor basis upon which to determine the swamp lands, if the actual present condition of the land is to be brought in question.

If Mr. Barnes, or any other person of respectability, had, before the making up of the list, filed his affidavit here, showing

the character of the tract, it would, under your circular, have been received and adopted in place of the field-notes, but, taking the field-notes and your circular as a basis upon which to determine the swamp lands, I am of the opinion that the tract claimed by Mr. Barnes has been correctly designated as swamp and overflowed land.

I am, very respectfully, your ob't serv't,

LEANDER CHAPMAN.

Surveyor General.

John Wilson, Esq., Com'r Gen'l Land Office.

Endorsed: Answered Oct. 6, 1854.

The diagram referred to in the foregoing is as follows:

(See diagram opposite.)

(Here follows diagram marked page 176a.)

After like offer, objection, ruling, and exception, defendant's counsel read

EXHIBIT 89

GENERAL LAND OFFICE, Oct. 6th, 1854.

Leander Chapman, Esq., surveyor general, Detroit, Mich.

SIR: I am in receipt of your letter of the 27th ulto., relative to the W ½ of N E ½ of section 33, in township 2 N, of range 2 W, claimed for the State of Michigan as swamp and overflowed land, and by Mr. O. M. Barnes as a purchaser from the General Government.

I have examined the diagram enclosed by you and the statements made in your letter, and am of the opinion that the indications of swamp as shown on said diagram cannot with propriety be connected in any of the three ways designated by you. They appear to be mere detached pieces of swamp, and that portion of the instructions of 21st of Nov., 1850, quoted by you, was intended to ap-

ply only to such bodies of land of that character as are shown 177 to be such by the field-notes, and when the exterior boundaries of such swamps cannot be accurately ascertained without

a survey—the straight lines being compromise boundaries.

Under the circumstances of this case, Mr. Barnes having acquired

a title by his purchase, and there being reasonable room for doubt as shown by the plat, I have decided to afford Mr. Barnes an opportunity of furnishing evidence, and have so advised him.

He is directed to furnish you with testimony proceeding from such creditable and disinterested witnesses, who are familiar with the mode and manner of surveying and marking the public lands, showing that they have been over and examined the lines of the land in question, and the marks or designations on the corner posts or frees, and that from such examination they have ascertained and know the greater part of each forty-acre subdivision thereof to be dry land, fitted for cultivation without artificial drainage or embankment, and not subject to such regular periodical overflow as would materially injure or destroy a crop.

If reliable testimony of this character be presented to you by Mr. Barnes, it must be regarded as establishing his title in preference to

the claim of the State.

Very respectfully, your ob't serv't,

JOHN WILSON, Commissioner.

After like offer, objection, ruling, and exception, defendant's counsel read

Ехнівіт 90.

SURVEYOR GENERAL'S OFFICE. Detroit, Sept. 18, 1852.

SIR: I enclose herewith copy of a letter received at this office in reference to the purchase of a tract of land which is included in the list to be certified to the State under the swamp-land act. Mr. Bartlett has been referred to the commissioner of the State land

office for an answer to his inquiry.

The register at Kalamazoo has sold two lots—the NE 178 of N E ¼ sec. 17, T 3 S, R 8 W, and N W ¼ S W ¼ sec. 32, T 4 S, R 10 W-previous to the receipt of the list furnished him in compliance with instructions contained in your letter of 10th July last.

Nothing has yet been heard from the registers at Detroit, Flint and Sault Ste. Marie in reference to the lists which were furnished them requesting annotations, but sufficient time has elapsed since the date of your letter to enable them to complete those lists.

Much more time has been consumed upon this work than was anticipated, but so far as the making up of the lists is concerned, everything is now nearly completed, except in those townships which have been surveyed since the transmission of the lists to the registers.

A supplemental list, embracing all the new surveys in which no sales will have been made, will be furnished your office at an early day.

Will it be necessary to furnish a new list for the townships which

have been resurveyed the past season, or will the old surveys govern the selections?

I am, sir, very respectfully, your ob't serv't,

CHARLES NOBLE.

Surveyor General.

J. Butterfield, Esq., Commissioner Gen'l Land Office.

Indorsed: Answered Oct. 4th, 1852. P. Daggy.

After like offer, objection, ruling, and exception, defendant's counsel read

EXHIBIT 91.

GENERAL LAND OFFICE, Oct. 4th, 1852.

Charles Noble, Esq., surveyor general, Detroit, Mich.

SIR: In answer to your letter of the 18th ultimo, I have to request that you will carefully re-examine the field-notes and plats in your office relating to the tract of land which Mr. 179

Bartlett desires to purchase, and if you are satisfied that the land in question is of the character of the lands embraced by the swamp-land grant, you will so advise him, and also inform him that it is not subject to sale or location; but if you should ascertain that the land is not of that character, you will so report it to this office at your earliest convenience.

You will pursue the same course in relation to the two tracts sold by the register at Kalamazoo. If they are designated as swamp or overflowed lands by your field-notes and plats, you will so advise the register; but if not, you will report that fact to this office.

The registers at Detroit, Flint, and Sault Ste. Marie will receive

due attention from this office.

In making out supplemental lists embracing the swamp lands in the townships recently surveyed, you will prepare three copies, one for your own office, one for the proper register, and one for this office.

In those townships resurveyed during the past season, it will be necessary to furnish new lists, in explanation of the former ones; but you will be careful to designate them as having been made out in lieu of the former ones.

Very respectfully, your ob't serv't,

JOHN WILSON, Commissioner.

After like offer, objection, ruling and exception, defendant's counsel read

EXHIBIT 92.

SURVEYOR GENERAL'S OFFICE. DETROIT, June 24, 1853.

SIR: Your letter of the 7th inst., has been received. In making the supplemental list of swamp lands in townships resurveyed and platted up to Dec'r 6th, 1852, your instruc-180 tions of 4th of Oct., 1852, were carefully observed, but it should have been stated either at the head of the list, or in the letter transmitting it, that it was intended to be placed on file in your office in lieu of the former list.

In all cases of resurveys, a list of swamp lands is made up from the plats of resurvey without any reference whatever to the old

plat or to the original list made out from the lot plats.

The question as to whether the original or the supplemental list should govern, it was supposed, would be decided at your office. As the question is submitted, however, it seems to me that the supplemental list, if made at all, should in all cases govern, and, in fact, it should be placed in lieu of the original list, as the plats of resurveys take the place of the original plats, whenever any plats are made of resurveyed townships.

In all the lists hereafter to be made up and forwarded, where the original list has already been sent on, the supplemental list will be considered as a substitute for the original, to take its place on the files, making the original list of no more account that are the plat-

of the original survey.

Very respectfully, your ob't serv't,

LEANDER CHAPMAN,

Surveyor General.

John Wilson, Esq., Commissioner Gen'l Land Office, Washington.

After like offer, objection, ruling and exception, defendant's counsel read:

EXHIBIT 93

SURVEYOR GENERAL'S OFFICE, DETROIT, Oct. 29th, 1853.

SIR: I transmit herewith supplemental list No. 2 of swamp lands in the Grand River land district.

I have, in obedience to your instructions, indicated in the heading of this list that it is intended to abrogate and supersede all lists of swamp lands heretofore made of townships contained within it.

I am, sir, very respectfully, your ob't serv't,

LEANDER CHAPMAN,

Surveyor General.

John Wilson, Esq., Com'n'r General Land Office, Washington.

After like offer, objection, ruling, and exception, defendant's counsel read

Ехнівіт 94.

GENERAL LAND OFFICE, Nov. 7th, 1853.

Leander Chapman, Esq., surveyor general, Detroit, Michigan.

SIR: Your letter of the 29th ulto., transmitting supplemental list of swamp and overflowed lands in the Ionia district, Michigan,

"intended to abrogate and supersede all lists of swamp lands heretofore made of townships contained within it," has been received. The original list will be altered so as to conform to said supplemental list.

Very respectfully, your ob't serv't,

JOHN WILSON. Commissioner.

After like offer, objection, ruling, and exception, defendant's counsel read

Ехнівіт 95.

SURVEYOR GENERAL'S OFFICE, Detroit, January 31st, 1855.

SIR: I enclose herewith a list of the swamp and overflowed ends in the Cheboygan land district contained in townships surveyed and platted up to January 15, 1855, which townships have not been included in any former list. With this list it is believed that a description of the swamp and overflowed lands in 182

every township in this State have been transmitted to your department.

Up to the present time, as fast as townships have been resurveyed, new lists of the swamp lands in such townships have been prepared from plats of the new or resurvey, and forwarded to your office and to the proper district land officer, to supersede and take the place of the list before prepared and furnished from the plats of the old or fraudulent surveys.

I have now to ask whether it will be proper to continue to furnish, as heretofore, new lists of the swamp lands in townships that may

hereafter be resurveyed.

I am, very respectfully, your ob't serv't,

L. CHAPMAN, Surveyor General.

John Wilson, Esq., Comm'r Gen'l Land Office, Washington.

After like offer, objection, ruling, and exception, defendant's counsel read

Ехнівіт 96.

GENERAL LAND OFFICE, February 12, 1855.

Leander Chapman, Esq., surveyor general, Detroit, Michigan.

SIR: I have to acknowledge the receipt of your letter of the 31st ulto., and the accompanying lists of swamp and overflowed lands in the Lake Superior and Cheboygan districts, Michigan. In reply to the inquiry made by you, I would state that it will be necessary for you to continue, as heretofore, to furnish new lists of the swamp lands in townships resurveyed, to supersede and take the place of those prepared from the defective or fraudulent surveys.

Very respectfully, your ob't serv't,

JOHN WILSON, Commissioner. And after like offer, objection, ruling, and exception, de fendant's counsel read extracts from the report of the commissioner of the State land office for the year 1852, as

Ехнівіт 97.

Report for the Year Ending September 30th, 1852.

Porter Kibbee, commissioner, in reference to swamp lands, says: No lists have been received of any portion of these lands in anticipation that we should be furnished with the lists within a reasonable time after the passage of the act of Congress donating the lands to the State, I procured the maps of all townships in the Lower Peninsula in which there are swamp lands. I addressed a communication to the Commissioner of the General Land Office in October, asking for lists of a part of these lands. That you may have the views of the proper department of the General Government on the subject, I subjoin the following letter from the Commissioner:

GENERAL LAND OFFICE, November 2d, 1852.

SIR: In answer to your letter of the 20th ultimo, I have to inform you that the lands to which you refer, and which you may desire to have approved in advance of the regular lists, as swamp and overflowed lands, enuring to the State of Michigan, under the act of 28th September, 1850, appear to be situated in three different land districts, viz., Detroit, Genesee and Ionia; in the two former of which no reports of the selections have ever been received at this office. Frequent applications from other States having heretofore been made of a similar nature, it was found necessary to establish a rule not to act upon any isolated tracts without taking action upon the whole selections from any one district, for the reason that

the final adjustment of the grant would thereby be much re-184 tarded. So that even if all the returns were in, in view of the foregoing regulation, I could not consistently comply with your request. But you may rest assured that the selections will be acted upon at the earliest possible period. At the same time, it must be borne in mind that this grant is a very heavy one, and consequently will require much time and labor to bring it to a close.

Very respectfully, your obedient servant.

JOHN WILSON, Commissioner.

After like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 98.

GENERAL LAND OFFICE, January 20th, 1854.

SIR: I have the honor to request that you will cause to be erased from the copy of approved list No. 1 of swamp and overflowed

4.17

lands in the Kalamazoo district the following tract of land, viz: $SW \downarrow of NE \downarrow sec. 13$, T3S, R7W, 40 acres. Said tract was erroneously approved, having been sold in 1836.

You will enter upon said list in place of said tract the $N \to 1$ of $N \to 1$ sec. 13, $T \to S$, $R \to W$, the tract intended to be approved.

You will be pleased to advise this office of the above corrections having been duly made.

With great respect, your ob't serv't, (Signed)

JOHN WILSON, Commissioner.

His excellency Andrew Parsons, governor of Michigan, Lansing, Michigan.

After like offer, objection, ruling, and exception, defendant's counsel read

Ехнівіт 99.

EXECUTIVE OFFICE, LANSING, Jan'y 30, 1854.

Sir: I have the honor to acknowledge the receipt of your communication of the 20 inst., requesting an erasure from approved list No. 1, of swamp and overflowed lands in the Kalamazoo district. The following tracts of land, viz: S W \(\frac{1}{2}\) of N E \(\frac{1}{4}\) sec. 13, T 3 S, R 7 W, 40 acres, and that in place ihereof there be entered the N E \(\frac{1}{4}\) of N E \(\frac{1}{4}\) sec. 13, T 3 S, R 7 W, and to inform you that I have made the correction accordingly.

Very respectfully, your ob't serv't,

ANDREW PARSONS.

Hon. John Wilson, Commissioner of Gen'l Land Office, Washington, D. C.

After like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 100.

GENERAL LAND OFFICE, February 24, 1854.

His excellency Andrew Parsons, governor of Michigan, Lansing, Michigan.

SIR: I have the honor to request that you will cause the copy of approved list No. 4, of swamp and overflowed lands in Genesee district, Michigan, to be corrected as follows, viz: In sections 26 and 27, T 23 N, R 3 W, enter the following in place of the tracts therein embraced:

$N_{\frac{1}{2}}$ of 26	3 23 N	3 W	320
N 1 of S W 1 26	; "	44	80
E 1 of N E 1 27		4.6	80
N E 1 of N W 1 27	"	44	40
S W 1 of N W 1 27	4.6	4.6	40
N W 1 of S W 1 27	44	44	40
SE 1 of SW 1 27	44	44	40
S E 1 27		**	160
18-331			

186 You will be pleased to advise this office of said corrections having been duly made upon said list. With great respect, your ob't serv't,

JOHN WILSON,

Commissioner.

After like offer, objection, ruling and exception, defendant's counsel read from a duly certified copy from the commissioner of the State land office, as

EXHIBIT 101

No 4

A list of swamp and overflowed lands selected as enuring to the State of Michigan, under the provision of the act of Congress approved September 28, 1850, in the district of lands subject to sale, at Ionia, Michigan, viz:

Index

Towns 23, 25, 26, 27,	north,	rang	e 3	west.
" 22, 24, 27,	66	66	4	4.6
" 21, 24, 26, 27,	4.6	44	5	66
" 21, 27,	44	64	6	4.6
" 24,	4.6	4.6	7	4.4
" 23 , 26, 30,	44	6.6	8	44
" 28,	4.6	66	9	66
" 22, 23, 24, 25, 27,	66	44	10	44
" 30,	44	4.6	11	66
" 30,	44	44	12	44

187	-					
Parts of sections.	Township	Range.	Acres.			
North \(\frac{1}{2} \dots \dots \dots \) 26	23	3	320			
$N_{\frac{1}{2}}$ of S W $\frac{1}{4}$ 26	44	44	80			
$\frac{E}{N}$ ½ of N E $\frac{1}{2}$ $\frac{27}{26}$	"	46	80	* See letter fre Office, Feb	om Com'r 'y 24th, 18	General Land 54.
N E 1 of N W 1 26	44	64	40	66	6.	64
S W 4 of N W 1 27	66	44	40	6.6	44	44
N W 1 of S W 1 27	6+	46	40			
S E 1 of S W 1 27	44	4.6	40			
S E 1 27	4.6	4.6	160			

^{*} Red ink in original copy. Also dittos and erasures.

GENERAL LAND OFFICE, December 26th, 1853.

Respectfully submitted for approval. (Signed)

JOHN WILSON,

Commissioner.

DEPARTMENT OF THE INTERIOR, December 31, 1853.

The selections embraced in the foregoing list are hereby approved subject to any valid legal rights that may exist thereto.

(Signed)

R. McCLELLAND, Secretary.

GENERAL LAND OFFICE, January 18th, 1854.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the foregoing is a true copy of list No. 4, of swamp and overflowed lands, selected as enuring to the State of Michigan, under the provisions of the act of Congress approved September 28th, 1850, in the district of lands subject to sale, at Ionia, Michigan, taken from the original on file in this office, which was on the 3ist day of December, 1853, approved by the Secretary of the Interior.

In testimony whereof, I have hereunto subscribed my name, and caused to be affixed the seal of this office, at the city of Washington, on the day and year above written.

(Signed)

JOHN WILSON, Commissioner.

After like offer, objection, ruling and exception, defendant's counsel read

EXHIBIT 102.

GENERAL LAND OFFICE, March 31st, 1854.

His excellency Andrew Parsons, governor of Michigan, Lansing, Michigan.

SIR: I have the honor to request that you will cause to be made the following corrections upon the certified copy of approved list No. 1 of swamp and overflowed lands in Genesee district, Michigan, heretofore transmitted to you, viz:

$\begin{array}{c} N \to \frac{1}{4} \text{ of } N \to W & \frac{1}{4} \\ N \to \frac{1}{2} \text{ of } N \to W & \frac{1}{4} \\ N \to \frac{1}{4} \text{ of } S \to E & \frac{1}{4} \\ S \to W & \frac{1}{4} \text{ of } N \to W & \frac{1}{4} \\ W & \frac{1}{2} \text{ of } N \to E & \frac{1}{4} \\ W & \text{ fr. } \frac{1}{2} \text{ of } N \to W \text{ fr. } \frac{1}{4} \end{array}$	sec. 27, 10 10 12 14 19	Γ 15 1 17 22 37 7 17	2 2 2 1 E	to be added to list. should be N ½ of S W ¼. should be N Ě ¼ of N E ¼. should be S W ¼ of S W ¼. should be W ½ of S E ¼. to be erased, and the following tracts substituted.
				lowing tracts substituted in place thereof:

The following is a list of lands erroneously embraced in approved list No. 1, the same having been disposed of subsequent to the pas-

sage of the act of 28th September, 1850, and the conflicts yet remaining unadjusted. Inasmuch as said lands must ultimately enure to the State, it is not deemed necessary to procure any special revocation of the approval heretofore made; but you will please cause to be written opposite to each one thereof the word "Suspended," and upon adjustment of the outstanding conflicts

you will be duly advised of the fact.

,	
SW 1 of SE 1	Sec 15 T 16 P 1 W
NE d of NW d.	20
SE t of NE t	25
W 1 of S W 1.	25
E 1 of S E 1	20
SW Lef NW 1	25
SW t of NW t	36
N W 4 OI N W 4	36
SE tol NEt	8 17 1
N 5 01 S E 4	11
$\mathbf{E} \stackrel{1}{\overset{1}{\circ}} \mathbf{of} \mathbf{S} \mathbf{E} \stackrel{1}{\overset{1}{\circ}} \dots$	14
E 1 of N E 1.	23
NE 1 of NE 1	33
SW t of NW t	05 0 1 10
SELOFNWI	25 6 1 E
SE‡ of NW‡	25
N W # OI N W A	25
N W ‡ OI N E ‡	26
N E + OI N E +	26
N W 4 of N W 4	$\frac{56}{26}$
NE 4 of NW 4.	26
SE 4 of SW 4	20
N W 1 -co w 1	
NW t of SW t	1 16 1
S E ‡ of N W fr. ‡	32 21 1

You will be pleased to advise this office of the foregoing corrections having been made at your earliest convenience.

With great respect, your ob't serv't,

JOHN WILSON,

Commissioner.

After like offer, objection, ruling, and exception, defendant's counsel read from a duly certified copy from the commissioner of the State land office,

Ехнівіт 103.

No. 1.

Genesee district.

Index.

Towns.		Range.
11, 12, 14, 14, 15, 16, 28, 29, 30, 31, 32, 3	17, 18, 19, 20, 21, 22, 23 3, 34, 35, 36, 37, 38, 39	, 24, 25, 26, 27,
11, 12, 13, 14, 15, 16,	17, 18, 19, 20, 21, 22, 2	3, 24, 25, 26, 27,
28, 29, 31, 32, 33, 3 6, 7, 8, 9, 10, 19, 13, 1	4, 35, 36, 37, 38	
26, 27, 28, 29, 30, 3	4, 15, 16, 17, 18, 19, 20, 2 1, 32, 33, 34	1, 22, 23, 24, 25, 1 E

No. 1.

A list of swamp and overflowed lands selected as enuring to the State of Michigan under the provisions of the act of Congress approved September 28th, 1850, in the district of lands subject to sale at Genesee, Michigan, viz:

	Section.	Township.	Range.	Acres.	
NElof N. Wl	97	N 15	E	10.00	C. 1121
S			_		See Wilson's letter, M'ch 31/54.
N of W W	21	17	2	80.00	See Wilson's letter Walnt at 17
NE d of NE	10	22	2	40.00	See Wilson's letter, Ma'ch 31/54.
SW of W W					See Wilson's letter, March 31 / 54.
S					
W ½ of * E ↓	14	7	1	80.00	See Wilson's letter, March 31 54.
Wenterwar	N	W			2 de la constante de la consta
N W & Lot N WA.	19	17	1	88 86	See letter of Comb. Class I
N Wfr. of N Wfr. S W fr. of S W fr.	66	4.6		33.90	See letter of Com'r Gen'l Land Office, dated March 31, 1854.
				34.96	1004.

All italics in this page in red ink in original copy.

```
    W ½ of S E ¼...... 15 16 1 80.00 

        S W ¼ of S E ¼, 40 a., suspended, being disposed of by U. S. since Oct. 28, 1850. See Wilson's letter, March 31, '54.
```

The S $W \downarrow$ of S $E \downarrow$ of sec. 15, N $E \downarrow$ of N $W \downarrow$ 20, S $E \downarrow$ of N $E \downarrow$ 25, $W \downarrow$ of S $W \downarrow$ of N $W \downarrow$ of N $W \downarrow$ of N $W \downarrow$ of 36, in T 16 N, R 1 W, son's letter of March 31st, 1854.

E ½ of N E 1 8	17 1	80.00	$SE \mid of \mid NE \mid suspended.$
N 1 of S E 1	17 1	80.00	See Wilson's letter, March 31/54. Suspended,
E of N E 23	17	80.00	Suspended. " "
VI of V E	11	1 - 80.00	
N 2 of N E 3 33	17 1	80.00	N E \ of N E suspended. See Wilson's letter, March 31/54.
	N I	2	
W 1 of N W 1 25	6 1	80.00	What V What C Electron
SE Of N W 1 25	6 1	40.00	$W_{\frac{1}{2}}$ of N $W_{\frac{1}{4}}$ & S E $\frac{1}{4}$ of N W $\frac{1}{4}$ suspended. See W 's letter, March 31/54.
N ½ of N E 1 26	6 1	80.00	N W 1 of N E 1. N E 1 of N E 1 & N IV 1
Vlot v w i			
N 1 of N W 1 26	-6 - 1	80.00	Suspended. See as above
8 E 01 8 1 35	8 1		Suspended. See W.'s letter, March 31-54.
W 1 of S W 1 1	16 1	80.00	1 1 01 8 11 Suspended See Wilson's
S E \downarrow of N W fr. \downarrow 32	21 1		letter, March 31-54. Suspended. See W.'s letter, March 31-54.

GENERAL LAND OFFICE, October 24th, 1853.

Respectfully submitted for approval. (Signed)

JOHN WILSON, Commissioner.

DEPARTMENT OF THE INTERIOR, WASHINGTON, Oct. 25, 1853.

The lands embraced in the foregoing list are hereby approved to the State of Michigan, under the act of Congress approved 28th September, 1850, subject to any valid legal rights which may exist thereto.

(Signed)

R. McCLELLAND, Secretary.

GENERAL LAND OFFICE, December 20th, 1853.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the foregoing is a correct copy of list No. 3, of swamp and overflowed lands, selected as enuring to the State of Michigan, under the provisions of the act of Congress, approved September 28th, 1850, in the district of lands subject to sale at Genesee, Michigan, taken from the original on file in this office, which was, on the 25th day of October, 1853, approved by the Secretary of the Interior.

[SEAL.] In testimony whereof, I have hereunto subscribed my name, and caused to be affixed the seal of this office, at the city of Washington, on the day and year above written.

JOHN WILSON,

Commissioner.

And after like offer, objection, ruling, and exception, defendant's counsel read

EXHIBIT 104

GENERAL LAND OFFICE, April 25th, 1854.

His excellency Andrew Parsons, governor of Michigan, Lansing, Michigan.

SIR: I have the honor to request that you will cause the following corrections, &c., to be made upon the copy of approved list No. 2 of swamp and overflowed lands granted to the State of Michigan, under act of 28th Sept., 1850, in the district of lands subject to sale at Genesee, Michigan, viz:

	CHA	RLE	S A	. RUST	, survivor, etc. 143
193					
Parts of sections.	Sec.	T.	R.	Area.	Remarks.
		N.	E.		Wellian Kr.
NW of NE 1	10	6	2	10.00	2.1
NW fr. of NW fr.	. 4	13	2	40.00	Subsequently sold; must be suspended.
SW of SW L		14	2	43.52	Within Ind'n res'n; must be erased from list.
NE pt. of NE fr.		11	3	15.87	Within Ind'n res'n; must be erased from list. Previously sold; must be erased from list.
(east of river)	,			10.04	rieviously sold; must be erased from fist.
Ept. of SE of SE E. of river	1 24	11	3	0.91	Previously sold; must be erased from list.
SElof NW fr. 1	. 18	29	3	80.00	Should be 40 acres.
8 1 of N E fr. 1		32	3	80.00	Should be 61.09 acres.
N W fr. 1		32	3	134.24	Should be 135 acres.
N E 1 of S E 1	. 1	32	3	40.00	Should be 21.82 acres.
ElofSE1	. 12	6.6	4.6	80,00	Should be 49.69 acres.
E 1 of N E 1	. 13	6.6	4.4	80.00	Should be 52.72 acres.
E 2 of S E 1	. 13	6.6	4.6	80.00	Should be 56.17 acres.
N 1 of N E 1	. 24	32	3	80.00	Should be 69.48 acres.
NE of SE	. 25	4.6	44	40.00	Should be 31.56 acres.
Lot No. 1 (N. of res'r	1) 24	4.4	66	26.10	These approvals were made from old plat. By
Lot No. 2		4.6	* *	29,62	new plat the tracts appear as lot No. 5, 24.8?
Lot No. 3		4.6	4.6	40.67	heres, and lot No. 6, 67,95 acres. List should be so altered. The area of N i should be 313 acres.
Lot No. 3		15	5	58,40	Within Ind'n res'n; must be erased from list.
Lot No. 4	. 19	15	ō	45.58	Within Ind'n res'n; mu-t be erased from list.
The register also re in the copy of said li to be corrected:	eports ist on	the: file i	follo n ye	wing er our offic	rors in copying. Should the same exist e, you will be pleased to cause the same
N fr. 1 of N E fr. 1	. 3	17	2	28.55	N E fr. 4 of N E fr. 4 on original list.
N 1 of S E 1	. 7	19	2	80.00	N 4 of N E 1 on original list.
SW of SE		20	2	40.00	App'd selections are N & E & of S W & W & of S E & and N E & of S E &
NE of NW		6	4	40.00	App'd selections are E \(\frac{1}{2}\) of N W \(\frac{1}{4}\), and S W \(\frac{1}{4}\) of N W \(\frac{1}{4}\).
Fr. section	. 10	14	6	177.05	Should be fr sec. 9; fr. sec. 10, which follows it, contains 00.90 acres.
You will be please	d to a	dvise	. thi	s office.	at your earliest convenience, of said cor-
rections having been	duly	mad	e.		and government of the con-
With grea	t resp	ect,	vour	ob't se	ry't.
(Signed)					JOHN WILSON, Commissioner.
101 1-1-6	1.		100		
194 And aft fendant's of State land office	couns	sel	read	l, fron	ction, ruling, and exception, de- n a duly certified copy from the
State Mild Office	01 111		-	у Хинві	r 105
			-	No.	-
			Ger	nesee e	listrict.
				Ind	er

	Index.	
Towns.	North.	R. east.
34, 35, 36, 37, 38		
6, 7, 8, 9, 10, 11, 12, 13,	, 14, 15, 16, 17, 18, 19,	20, 21, 22, 23,
25, 26, 27, 29, 30, 31	, 32, 34, 35, 36, 37, 38	2
6, 7, 10, 11, 14, 15, 16,	17, 18, 19, 20, 21, 22, 2	3, 24, 26, 27, 28,
29, 30, 31, 32, 34, 35,	36	3
6, 7, 8, 10, 11, 13, 15, 1	6, 17, 18, 19, 20, 21, 2	2, 23, 24, 25, 26,
27, 28, 29, 30, 31, 32,	33, 34, 35, 36	4
6, 8, 11, 12, 13, 14, 15,	16, 17, 18, 19, 20, 21, 23	2, 23, 24, 25, 26,
27, 28, 29, 30, 31, 32,	33, 34, 35, 36	
12, 13, 14, 18, 19, 20		6

No. 2.

A list of swamp and overflowed lands selected as enuring to the State of Michigan under the provisions of the act of Congress approved September 28th, 1850, in the district of lands subject to sale at Genesee, Michigan, viz:

	Parts of sections.	Section.	Township	Range.		
Suspended.	N W 1 of N E 1	19	6	2	40.00	Sold subsequent to act. Vide John Wilson's letter, Apr.
Erased.	KW fr. of N W	+	1:)	2	43.52	25, 1854. Within Indian reservation. Vide John Wilson's letter, April
Erased, 195	*W + of B W +	-33	14	2	10.00	25, 1854. Within Indian re-r.
Erased.	NEpt. of NEfr. 4 (East of river)	21	-11	2	15.67	Wilson's letter, April 25, 1854. Sold previous to act.
	Ept. of S E fr. 1					Wilson's letter, April 25, 1854.
Erased.	East of river	24	11	3	.91	Sold previous to act.
	SE of N W fr.]	18	29	3	40.00 80.00	Wilson's letter, April 25, 1854. Vide John Wilson'- letter, April 25, 1854.
	$S \ \mbox{$\frac{1}{2}$ of N E fr. $1,\ldots$}$	1	32	3	61.09 80.00 135.00	Vide John Wilson's letter, April 25, 1854.
	N W fr. 1	1	32	3	101.21	1
	N E \S of S E \S	1	32	3	21.82 40.00 49.69	
	E of S E	12	32	3	80.00 52.72	Wilson's letter, April 25, 1854.
	$E \ \underline{\flat} \ of \ N \ E \ \underline{\flat} \dots \dots$	13	32	3	56.17	11 11 11
	E 1 of S E 1	13	32	3	80.00	Wilson's letter, April 25, 1854.
	N 1 of N E 1	24	32	3	69.48	Wilson's letter, April 25, 1854.
r	NE of SE \	25	32	3	31.56	Wilson's letter, April 25, 1854.
Erased. Erased.	bot No. 3	111	15	-	58.40 15.56	Within Indian reservation.
	$\sum_{N=1}^{E} \text{fl. } \{ \inf_{N} N \in \text{fl. } \}.$	3	17	2	28.55	Wilson's letter, April 25, 1854. Vide Wilson's letter, April 25,
	N l of E	7	19	2	80.00	1854. Vide Wilson's letter, April 25, 1854.
	N 1	12	20	2	320.00	
	E 1 of S W 1	12	20	2 2	80.00	
	W 1 of S E 1	12	20	2	80.00	
	NE l of SE l	12	20	2	40.00	
	E ½ of N W ↓ S W ↓ of N W ↓	12 12	6	4		
	Fractional section.	9	14	-	$\frac{40.00}{177.05}$	

GENERAL LAND OFFICE, October 24, 1853.

Respectfully submitted for approval. (Signed)

JOHN WILSON, Commissioner.

DEPARTMENT OF THE INTERIOR, WASHINGTON, October 25th, 1853.

The selections embraced in the foregoing list are hereby approved to the State of Michigan, under the act of Congress approved the 28th day of September, 1850, subject to any valid legal rights which may exist thereto.

(Signed)

SEAL.

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R. M. McCLELLAND, Secretary.

GENERAL LAND OFFICE, December 26th, 1853.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the foregoing is a correct copy of list No. 2, of swamp and overflowed lands, selected as enuring to the State of Michigan, under the provisions of the act of Congress, approved September 28th, 1850, in the district of lands subject to sale at Genesee, Michigan, taken from the original on file in this office, which was, on the 25th day of October, 1853, approved by the Secretary of the Interior.

In testimony whereof, I have hereunto subscribed my name, and caused to be affixed the seal of this office, at the city of Washington, on the day and year above written. (Signed)

JOHN WILSON,

Commissioner.

After like offer, objection, ruling, and exception, defendant's counsel read

Ехнівіт 106.

GENERAL LAND OFFICE, May 19, 1854.

His excellency Andrew Parsons, governor of Michigan, Lansing, Michigan.

Sir: I have the honor to request that you will cause the following notes and corrections to be made on the copy of approved list to 3 of swamp and overflowed lands in Genesee district, Michigan, iz:

	E	
23	6	Should be S ½ of S E 4.
		Should be N E fr. of.
26	- 6	N W fr. 1.
4.6	6.4	Should be section 12.
11	9	Should be section 18 & eight *
7	8	Sold prior. Must be erased from the
4.4	6.6	Sold prior. Must be erased from list.
9		Cold prior. Must be erased from list
6	8	Loc'd subsequent. Must be suspended.
10	S	Loc'd subsequent. Must be suspended.
66	**	and the suspended
1.9		Loc'd subsequent. Must be suspended.
	. 0	Loc'd subsequent. Must be suspended.
	11	Loc'd subsequent. Must be suspended.
15	9	Sold subsequent. Must be suspended.
6	9	26.14 acres. Should be 33.14 acres.
	26 11 9 6 10 12 7 15	26 6. 11 9 7 8. 9 8 6 8 10 8. 12 8 7 11 15 9

^{* &}amp; eight in pencil in original.

146 THE MICHIGAN LAND AND LUMBER CO., LIMITED, VS.

SW t of SE	1 26	7	8	Must be added to list.
SE of NW	1 33	12		Must be added to list.
SW of SE	1 26	7		Must be added to list.
SE of NW			9	Must be added to list.
WlofSW	sec. 22 T 7 N	R 11 E	munch	be added to list

You will be pleased to advise this office of said corrections, etc., having been duly made.

With great respect, your ob't serv't,

JOHN WILSON, Commissioner.

After like offer, objection, ruling and exception, defendant's counsel read, from a duly certified copy from the State land office of Michigan,

Ехнівіт 107.

No. 3.

Genesee district.

Index.

Towns.	North.	R. east.
20, 21, 22, 23, 24, 25, 2	6, 27, 28, 29, 30, 31, 32, 33, 34	35 6
9, 10, 12, 13, 14, 15, 19	, 20, 21, 22, 23, 24, 25, 26, 27,	28, 29, 30,
8 7 9 10 19 19 11 1	5 90 90 90 94 95 94 95 99	7
32 33 34	5, 20, 22, 23, 24, 25, 26, 27, 28,	29, 30, 31,
6, 7, 9, 10, 11, 12, 13, 1	4, 15, 16, 17, 22, 23, 24, 25, 26,	27. 28. 29
30, 31, 32, 33		9
6, 7, 8, 9, 10, 11, 12, 13	, 14, 15, 16, 17, 18, 26, 27	10
6, 7, 8, 9, 10, 11, 12, 13	, 14, 15, 16, 17, 18	11

No. 3.

A list of swamp and overflowed lands, selected as enuring to the State of Michigan, under the provisions of the act of Congress approved September 28th, 1850, in the district of lands subject to sale at Genesee, Michigan, viz:

Parts of sections.	Section.	Township.	Range.	Acres.	
8 J of SE 1	11	N 23	E 6	80.00	Vide Wilson's letter May 19-54.
Efr. Jof N Wfr. 1.	1	26	6	41.60	Vide Wilson's letter May 19 54
3 4 01 5 W 1	12	20	13	80.00	Vide Wilson's letter Man 19 53
E d of S E 1	18	11	9	80,00	Vide Wilson's letter May 19 54.
N-13-1	12	7	- 63	160.00	Erased; sold prior to Wilson's, May 19 54.

199							
	Parts of section.		Section.	Township.	Range.	Acres.	
Erased.	** 13 of 6 15	Sold prio	r De	N	E	10.0	0 W2 - 1 - 1 - 1
Erased.	N 11 1	to grant. Sold prio		- 0	0	10.0	Wilson's letter, May 19
Suspended.	N. H. L. C. L. Y.	to grant. Located		*	*	10.00	Wilson's letter, May 19/54. Subsequent to act.
Suspended.	N E + of N B +	Located	99	10	0	40.00	Vide Wilson's let- ter May 19/54. Subsequent to act. Vide Wilson's let- ter May 19/54.
Suspended.	*Elazel	Located	110	10	- 61	10.00	Subsequent to act.
Suspended.	NE of to W	Located	91	19	11	19.00	Vide Wilson's let- ter May 19/54. Subsequent to act. Vide Wilson's let-
Suspended.	SW of N B	Located	21-	-7	11	10.00	ter May 19/54. Subsequent to act. Vide Wilson's let-
Suspended.	N. W. fr. +		 ++	15	0	10.0 8	ter May 19/54. May 19-1854. Wil- son's letter same
	$S\ W$ fr. part of $N\ W$ fr. [.		30	6	9	33.14	date. Vide Wilson's letter
	$SW \downarrow of SE \downarrow \dots \dots$		26	7	8		May 19-1854. Added May 19- 1854.
	8 E " N W		33	1.3	9	40.00	Vide Wilson's letter same date. S E 4 of N W 4 add- ed June 3-54.
	W ½ "S W 4		22	7 1	1	80.00	Vide Wilson's letter May 19–54. Added June3–1854. Vide Wilson's letter May 19–54.
	Italias and amount ! 1			-			The second second second

Italies and erasures in description in red ink in original.

GENERAL LAND OFFICE, October 24, 1853.

Respectfully submitted for approval. (Signed)

JOHN WILSON, Commissioner.

DEPARTMENT OF THE INTERIOR, WASHINGTON, October 25th, 1853.

The tracts embraced in the within list are hereby approved to the State of Michigan under the act of Congress approved 28th September, 1850, subject to any legal valid rights which may exist thereto.

(Signed)

R. McCLELLAND, Secretary.

200 General Land Office, December 20th, 1853.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the foregoing is a true copy of list No. 3, of swamp

and overflowed lands, selected as enuring to the State of Michigan, under the provisions of the act of Congress approved September 28th, 1850, in the district of lands subject to sale at Genesee, Michigan, taken from the original on file in this office, which was, on the 25th day of October, 1853, approved by the Secretary of the Interior.

In witness whereof, I have hereunto subscribed my name, and caused to be affixed the seal of this office, at the city of [SEAL.] Washington, on the day and year first above written.

(Signed)

JOHN WILSON, Commissioner.

And after like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 108.

GENERAL LAND OFFICE, July 1st, 1854.

His excellency Andrew Parsons, governor of Michigan, Lansing, Michigan.

SIR: I have the honor to request that you will-cause to be made the following corrections on the copy of approved list No. 3, of swamp and overflowed lands, in Sault Ste. Marie district, Michigan, heretofore transmitted to you, viz:

 $N \stackrel{1}{\underline{1}}$ of $N \stackrel{1}{W} \stackrel{1}{\underline{1}}$ sec. 11, T 42, R 15 W, 80 acres, should be altered to $W \stackrel{1}{\underline{1}}$ of $N \stackrel{1}{W} \stackrel{1}{\underline{1}}$ sec. 11, T 42, R 15 W. There is no such subdivision as the first named upon the plat, and the surveyor general has directed the alteration.

With great respect, your ob't serv't,

JOHN WILSON, Commissioner.

After like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 109.

EXECUTIVE OFFICE, LANSING, July, 1854.

SIR: I have the honor to acknowledge the receipt of your communication of 1st inst., requesting corrections to be made in the copy of approved list No. 3, of swamp and overflowed lands in Sault Ste. Marie district, Michigan, and to inform you that I have caused the corrections as requested to be made.

With great respect, your ob't serv't,

ANDREW PARSONS.

Hon. John Wilson, Com'r Gen. Land Office, Washington, D. C.

After like offer, objection, ruling and exception, defendant's counsel read, from a duly certified copy from the State land office of Michigan,

Ехнівіт 110.

Grand River Land District No. 1.

Part of section.	Section.	Town.	Range.	Contents.	Remarks.
N E fr. \(\frac{1}{4}\) N W fr. \(\frac{1}{4}\). S \(\frac{1}{2}\) S E \(\frac{1}{4}\).	2	North.	West.	39.76	of this district.
NE ISW I SW INW fr. I	"	"	1	80.00 40.00 40.00	0.00
N W fr. \(\frac{1}{2} \) N E fr. \(\frac{1}{2} \). S \(\frac{1}{2} \) N E fr. \(\frac{1}{2} \). N W \(\frac{1}{2} \) S E \(\frac{1}{2} \).	4 "	"/	1.	39.06 80.00	(39.06)
NE fr. 1 NW fr. 1. NW fr. 1 NW fr. 1	**	(44	40.00 38.95 38.84	
$\begin{array}{cccccccccccccccccccccccccccccccccccc$	"	"	**	80.00 80.00	
202					
S W \(\frac{1}{4} \) S W \(\frac{1}{4} \). N E fr. \(\frac{1}{4} \) N E fr. \(\frac{1}{4} \). S \(\frac{1}{2} \) N E fr. \(\frac{1}{4} \). S E \(\frac{1}{4} \) N W fr. \(\frac{1}{4} \).	5	18	3	$\frac{40.00}{38.79}$ 80.00	
S 1 N E fr. 1	6	"]:	$\begin{array}{c} 40.00 \\ 320.00 \\ 80.00 \end{array}$	
N E fr. 1 N W fr. 1. S E 1 N W. fr. 1	46	1	46	$\frac{38.08}{40.00}$	
S E 1 E 1 S W fr. 1	7	1	66	$160.00 \\ 80.00$	
E ½ Section	8	"\		320.00	
W ½ N W ¼	9	**)	80.00 80.00	S W 4 S E 4 sec. 9,
N E ‡ S W ‡	46	. /	/	40.00	A. 40.00
SWISWI	66	"/	66	$\frac{40.00}{40.00}$	
SE I S W 1 1	0	/	66	40.00	
E 1	**			20.00	
$\begin{array}{cccccccccccccccccccccccccccccccccccc$	1 "	•		60.00	SW NW sec. 12. 40.00
	46	"		$80.00 \\ 40.00$	E 1 N W 1 " " . 80.00
	-				N E 4 " . 160.00

Erasures in pencil in original.

Part of section.	Section.	Town.	Range.		Remarks.
N W ‡ N W ‡ N E ‡ N E ‡ W ‡ N E ‡ N W ‡	14 15 "	"	West 3	40.00 40.00 80.00 160.00	
N E ¼ S W ¼. W ½ S W ¼. S E ¼ N E ↓ W ½ N E ↓ E ½ N W ↓	10	1	1	40.00 80.00 40.00 80.00 80.00	NW ¼ N E ¼ sec. 17. 40.00 NE ¼ NW ¼ " ". 40.00 W ½ NW ¼ " ". 80.00
S E E ½ S W ¼ E ½ N E ↓ N W ¼ N E ↓ N E ¼ N W fr. ¼	18	1	1	160.00 80.00 80.00 40.00 40.00	
S W fr. \(\frac{1}{4}\) N W. fr. \(\frac{1}{4}\). N W fr. \(\frac{1}{4}\) S W. fr. \(\frac{1}{4}\). 203 S E \(\frac{1}{4}\) S W fr. \(\frac{1}{4}\). S \(\frac{1}{2}\) S E \(\frac{1}{4}\)	19	"	3 ::	47.23 47.28	47.23
N E fr. 4 N W fr. 4. S 1 S E 4	20 21 2 3	- 5 8	***	80.00 80.00 39.76 80.00	**************************************
N E ¼ S W ¼ S W ¼ N W fr. ¼ S ½ N E fr. ¼ N W ¼ S E ¼ N E fr. ¼ N W fr. ¼	4	")	40.00 40.00 80.00 40.00 38.95	
NW fr. 4 NW fr. 4. S 1 NW fr. 4 N 1 SW 4 SW 4 SW 4 NE fr. 4 NE fr. 4.	" " 5	"./ (".		38.84 80.00 80.00 40.00 38.79	
S ½ N E fr. ‡	6			8000 160.00 40.00 160.00 38.08	
S E ¼ N E fr. ¼	 7 8	" "/)	$ \begin{array}{c c} 40.00 \\ 160.00 \\ 80.00 \\ 320.00 \\ 640.00 \end{array} $	

Erasures through town and range in pencil. Other erasures in ink in original.

Part of section.	Section.		Contents.	Remarks.
W ½ N W ‡	North 9 % 10 " 11 " " "	h. West.	Acres. \$0.00 40.00 40.00 40.00 320.00 160.00 80.00	See next page.
N E ‡ S E ‡ S W ‡ N W ‡ E ½ N W ‡ N E ‡ N W ‡ N W ‡ 204 N E ‡ N E ‡	12 " " " 14 15 8	3	40.00 40.00 80.00 160.00 40.00 40.00 80.00	
N W \$\frac{1}{2} \cdot N E \$\frac{1}{4} \cdot	16 " " " " " " " " " " " " " " " " " " "		$\begin{array}{c} 160.00 \\ 40.00 \\ 80.00 \\ 40.00 \\ 80.00 \\ 80.00 \\ 60.00 \\ \end{array}$	
N W \ \ N E \ \ \ \ N W \ \ fr. \ \ \ S W \ fr. \ \ \ N W \ fr. \ \ \ S W \ fr. \ \ \ \ \ \ S W \ fr. \ \ \ \ \ S W \ fr. \ \ \ \ \ S W \ fr. \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	18 " "/9 "/	44	$ \begin{array}{c c} 80.00 \\ 80.00 \\ 40.00 \\ 40.00 \\ 47.23 \\ 47.28 \\ 40.00 \\ \end{array} $	
E ½ N W ¼ 2 W ½ N E ¼	20 " 21 " " " " " " "	1	80.00 80.00 80.00 40.00 60.00 40.00	
N E ‡		10 " 35 " 4 " 16 " 32	40.00 60.00 20.00 40.00 60.00 60.00	

Dont oftime 8		9	Contents	
Part of section.	Town.	n g	nte	Remarks.
J.				
N E ‡ N W fr. ‡ 30		h. We	st. Acres.	4-1-11:13:1
	" "	3	$40.00 \\ 47.41$	to be subdivided.
N 1 N E 1 3		1	80.00	
S W 1 N W 1 30	3 "	1	40.00	
22 2 11 4		1.	$80.00 \\ 160.00$	
	1	4	36.66	
S W 1 N W. fr. 1 '	· f	**	40.00	
205	1			
NEISE1 2	18	1	40.00	SEINEfr. 1
CWINDS I			40.00	Sec. 2, 40,00
о и т и и и т "		7	40.00	N W fr. 1 N E fr. 1 A
		/		Sec. 2, 34.59 to be sub.
S E 1 N W fr. 1 "	/	"	40.00	to be sub.
N W fr. 4 N W fr. 4. "	- /	**	35.99	
$ \begin{array}{ccccccccccccccccccccccccccccccccc$	(46	$80.00 \\ 40.00$	* *
* W 1 S W 1 17	.4	1.66	80.00	80 A.
W 1 S W 1 20		1.	80.00	
N & N E 1 25	**	"	80.00	
$\begin{array}{cccccccccccccccccccccccccccccccccccc$	44		80.00 40.00	
SE 1 N W 1 "	**	1	40.00	
NETSWILL "	"	/"	40.00	
$\begin{array}{cccccccccccccccccccccccccccccccccccc$	"/	44	40.00	
S ½ N E ‡ 29 N W ‡ "	1	66	$80.00 \\ 160.00$	
$S_{\frac{1}{2}}$ "	1	66	320.00	
$S E \downarrow N E \downarrow \dots 30$	"	"	40.00	
$\begin{array}{cccccccccccccccccccccccccccccccccccc$	"	1	80.00	
$E_{\frac{1}{2}}$	66	"	$\frac{40.00}{320.00}$	
$N_{\frac{1}{2}}$	66	"]	320.00	
N W 4 S W fr. 4 " Let No. 2 S W fr. 15 "	66	1.	40.00	
Lot No. 2 S W fr. 1 S " W fr. 4	"/		34.80	
NEfr. and part of "	1	44	47.34	
lot No. 1 SEfr. 48	1			
W fr. 1 V 1 S E 1	1	"	00.00	
$N \stackrel{1}{\underset{1}{\stackrel{1}{\underset{1}}{\underset{1}}{\stackrel{1}{\underset{1}}{\stackrel{1}{\underset{1}}{\stackrel{1}{\underset{1}}{\stackrel{1}{\underset{1}}{\stackrel{1}{\underset{1}}{\stackrel{1}{\underset{1}}{\underset{1}}{\stackrel{1}{\underset{1}}{\underset{1}}{\stackrel{1}}{\underset{1}}{\underset{1}}{\underset{1}}{\underset{1}}{\underset{1}}{\underset{1}}{\underset{1}}{\stackrel{1}{\underset{1}}{\stackrel{1}}{\underset{1}}{\stackrel{1}}{\underset{1}}$	1	44	$80.00 \\ 40.00$	
$N_{\frac{1}{2}}$ 33	"	44	320.00	
N W ‡ S W ‡ "	"	1	40.00	

Erasures through town and range in pencil. Other erasures in ink in original.

SURVEYOR GENERAL'S OFFICE, DETROIT, March 29, 1852.

The above list of swamp lands in the Grand River land district which has been made up in accordance with the instructions from the General Land Office, dated Nov. 21, 1850, embraces all the lands in said district except such as may be found in townships which have been ordered to be resurveyed. The districts reported by Judge Burt and Hiram Burnham to be fraudulent are embraced in the list and marked "F."

The aggregate of unsold swamp lands (excluding 13 townships situated near Grand Traverse bay), according to the above statement amounts to 1,249,114.73 acres, in which is included the unsurveyed portion of township 9 N, R 1 W, estimated at 4,680 acres. CHARLES NOBLE, Sur. Gen't.

(Copy.)

U. S. LAND OFFICE, IONIA, MICH., Feb. 12, '52.

In the foregoing list, the descriptions marked sold were sold prior to September 28th, 1850. The descriptions sold since that date are marked giving date of sale, and noting the kind of payment C. 10/—or \$1.25 per acre, whether cash or warrants issued under act of Feb'y 11, 1847, or warrants issued under act of Sept. 28, 1850. The description-marked State are land-heretofore selected by the State of Michigan under different laws of Congress.

I have been over with the list twice—have endeavored to be accurate, but have probably made some mistakes.

LOUIS S. LOVELL, Regt.

Hon. the sur. gen'l, Detroit, Michigan.

After like offer, objection, ruling and exception, defendant's counsel read, from the records of the State land office of Michigan,

Ехнівіт 111.

No. 1.

Approved List No. 1, Ionia.

A list of swamp and overflowed lands selected as enuring to the State of Michigan under the provision of the act of Congress, approved September 28th, 1850, in the district of lands subject to sale at Ionia, Michigan, viz:

Index.

Towns.	North.	Range.
1, 2, 3, 4, 5, 6, 7, 8, 9, 10.		1
1, 2, 3, 4, 3, 6, 7, 8, 9, 10		9
1, 2, 0, 4, 0, 0, 7, 9, 10, 1.	1, 12, 13, 15, 16, 17, 18, 19, 20	91 99 99
1 2 3 4 6 8 9 10 11 1	34, 35, 36, 37, 38, 39	3
26. 28. 29. 32. 33. 34. 5	12, 13, 14, 15, 16, 17, 18, 19, 20 35, 36, 37, 38, 39	9, 21, 23, 25,
1, 2, 4, 7, 8, 9, 10, 11, 12	13, 14, 15, 16, 17, 18, 19	4
20—331	10, 14, 10, 10, 11, 10, 13	5

N E fr'l \(\frac{1}{4} \) of N W fr'l \(\frac{1}{4} \). S \(\frac{1}{2} \) of S E \(\frac{1}{4} \). N E \(\frac{1}{4} \) of S W \(\frac{1}{4} \). S W \(\frac{1}{4} \) of N W fr'l \(\frac{1}{4} \). N W fr'l \(\frac{1}{4} \) of N E fr'l \(\frac{1}{4} \). N W \(\frac{1}{4} \) of S E \(\frac{1}{4} \). Am't over. N E fr'l \(\frac{1}{4} \) of N W fr'l \(\frac{1}{4} \).		
N W fr'l \(\) of N W. fr'l \(\) \(\) S \(\) of N W fr'l \(\) \(\) N \(\) of S W \(\) \(\) \(\) N \(\) of S W \(\) \(\) \(\) N E fr'l \(\) of N E fr'l \(\) \(\) S \(\) \(\) of N E fr'l \(\) \(\) S \(\) \(\) of N W fr'l \(\) \(\) \(\) S \(\) \(\) of N E fr'l \(\) \(\) S \(\) \(\) of N E fr'l \(\) \(\) S \(\) \(\) of N E fr'l \(\) \(\) E fr'l \(\) \(\) E fr'l \(\) \(\) O W fr'l \(\) \(\) \(\) E fr'l \(\) O W fr'l \(\) \(\) \(\) E fr'l \(\) O W fr'l \(\) \(\) \(\) \(\) E fr'l \(\) \(\) O W fr'l \(\) \(\) \(\) \(\) \(\) E fr'l \(\) \(\) O W fr'l \(\) \(5 18 3	38.84 80.00 80.00 40.00 38.79 80.00 N. P. 40.00 N ½ N. P. 320.00 80.00
S E	**	38.08 40.00 160.00 80.00 320.00 640.00 80.00 N. P. 40.00 N. P. 40.00 N. P.
$\begin{array}{cccccccccccccccccccccccccccccccccccc$	10 " " " " " " " " " " " " " " " " " " "	40.00 N. P. 40.00 N. P. 320.00 N. P. 160.00 N. P. 80.00 N. P. 40.00 N. P. 40.00 N. P. 80.00 N. P.
Am't over		160 3,593.48 3,593.48 67,649.70

	Sec.	Town.	Range. Acres.		
N W 4 of N W 4 N E 4 of N E 4 W 5 of N E 4	14 15		V. 3 40 40 40 80		
N W 4 N E 4 of S W 4	44	66 6	$\frac{80}{160}$	N. P.	
W 5 01 S W 1	66	"	$\frac{40}{80}$	N. P. N. P.	
N W 4 of N E 4. N E 4 of N W 4.	17	"/"	40	N. P.	
W s of N W 1	4.6	/ :	40	V D	
E S OI N E S	18	· "		N. P. N. P.	
N W ‡ of N E ‡. N E ‡ of N W fr'l ‡.	46	66	40	N. P.	
- W III I TO I N W IF I I	19	18 3	40	N. P.	
NW" tof SW" 1	4.	" 10		3 N. P. 8 N. P.	
S E \(\) of S. W. fr'l \(\) S \(\) of S E \(\) .	"	66 66	40	N. P.	
E a of N W 1	$\frac{20}{21}$		80	N. P.	
W # 01 N E 1		" /"	80 80	N. P. N. P.	
NETOINE	44	"/"	40	N. P.	
NW t of SEt.	66	7 :	160	N. P.	
SE 4 of SE 4	66		40 40	N. P. N. P.	
SE Jof NW	22	1. "	40.	N. P.	
N E 1 S 1	66	"\"	160	N. P.	
NE 1 of NE 1	28	" /	320 40		
W 3 OI N E	44		80	N. P.	
N W 1		" "	160	N. P.	
		/	5,807.99		
A'4			0,001.00		
Am't over		<i>[</i>	5,807.99		
	- /			67,64	9.70
	1			67,64	9.70
N 1	29 1	7 3 W.	320		
N. E. J. C. V. W. G. J. J.)()	" /"	160		
N W fr'l l of N W fr'l 1		("	40		
N 5 OI N E 1	5 4	. 1	47.41 80	N. P.	
2 11 1 01 1 11 4	6 '			N. P.	
7 12 1	66 6	/:	80		
			160	6,73	5.40

N. P. and erasures in pencil in original.

N W fr'l \(\frac{1}{4} \) of N W fr'l \(\frac{1}{4} \). S E \(\frac{1}{4} \) of N E fr'l \(\frac{1}{4} \). N W fr'l \(\frac{1}{4} \) of N E fr'l \(\frac{1}{4} \). N W fr'l \(\frac{1}{4} \) of N W fr'l \(\frac{1}{4} \). S W \(\frac{1}{4} \) of S E \(\frac{1}{4} \). S W \(\frac{1}{4} \) of S E \(\frac{1}{4} \). W \(\frac{1}{2} \) of S W \(\frac{1}{4} \). N \(\frac{1}{2} \) of N E \(\frac{1}{4} \). N \(\frac{1}{2} \) of N E \(\frac{1}{4} \). 210 S W \(\frac{1}{4} \) of N E \(\frac{1}{4} \).	1 2 " " 11 17 20 25 27 27	E. F. F. F. F. Z. Town.	E	34.66 40 24.59 35.99 80 40 80 80 80	
Am't over NE ‡ of SW ‡ SW ‡ of NE ‡ SW ‡ of SW ‡ SW ‡ of SW ‡ S½ of NE ‡ NW ‡ S½ SE ‡ of NE ‡ SE ‡ of SE ‡ E ‡ of SE ‡ SW ‡ of SE ‡ SW ‡ of SE ‡	27 27 29 30 31 32	18/	4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	40 40 665.24 665.24 40 40 80 160 320 40 80 40 320 40 320 40 40 40 40 80 40 80 40 80 40 80 40 80 40 80 40 80 40 80 40 40 80 40 40 40 40 40 40 40 40 40 40 40 40 40	177,472.43 177,472.43
Lot No. 2. Lot No. 1. N ½ of S E ‡. S W ¼ of S È ‡. N ½. N ½.			6 6 6	34.80 47.34 80.00 40 820 40	2,707.38* 2,706.38

a *\$2,707.38 and erasures in pencil in original.

GENERAL LAND OFFICE, October 27th, 1853.

Respectfully submitted for approval. (Signed)

JOHN WILSON, ,

Commissioner.

T

Department of the Interior, October 27th, 1853.

The lands embraced in the foregoing list are hereby approved to the State of Michigan under the act of Congress, app'd 28th September, 1850, subject to any valid legal claim that may exist thereto.

(Signed)

R. McCLELLAND, Secretary.

(S.B.rea)

211

GENERAL LAND OFFICE, January 13th, 1854.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the foregoing is a true copy of list No. 1 of swamp and overflowed lands selected as enuring to the State of dichigan, under the provision of the act of Congress, approved september 28th, 1850, in the district of lands subject to sale at onia, Michigan, taken from the original on file in this office, which was on the 27th day of October, 1853, approved by the Secretary of the Interior.

In testimony whereof, I have hereunto subscribed my name and aused to be affixed the seal of this office, at the city of Washigton, on the day and year above written.

JOHN WILSON,

Commissioner.

Defendant's counsel then read

Ехнівіт 112.

Executive Office, Lansing, Jan'y 31, 1854.

SIR: I have the honor to acknowledge the receipt of a certified ppy of list No. 1 of swamp and overflowed lands selected as enuring the State of Michigan, under the provisions of the act of Congress proved Sept. 28, 1850, in the district of lands subject to sale at man, Michigan, taken from the original on file in your office, hich was on the 27th day of October, 1853, approved by the Sectary of the Interior.

And I hereby respectfully request that the Secretary of the Interior issue the patents conveying the fee-simple title in said lands to e said State of Michigan.

Very respectfully, your ob't serv't,

ANDREW PARSONS.

Hon. John Wilson, Commissioner of the General Land Office, ashington, D. C.

Defendant's counsel then offered the following to which plaintiff's counsel objected as immaterial and irrelevant, and objection being overruled, plaintiff's counsel excepted, and dedant's counsel then read

Ехнівіт 113.

THE UNITED STATES OF AMERICA.

Ionia No. 2.

all to whom these presents shall come, Greeting: Vhereas, by the act of Congress approved September 28th, 1850, itled An act to enable the State of Arkansas and other States, to reclaim the "swamp lands within their limits," it is provided that all "swamp and overflowed lands" made unfit thereby for cultivation within the State of Michigan, which remained unsold at the

passage of said act, shall be granted to said State; and

Whereas, in pursuance of instructions from the General Land Office of the United States, the several tracts or parcels of land hereinafter described have been selected as "swamp and overflowed lands" enuring to said State, under the act aforesaid, being situated in the district of lands subject to sale at Ionia, Michigan, to wit: * * *

Township 18 N, R 4 west.

The northwest fractional quarter of the northwest fractional quarter of section one; the southeast quarter of the northeast fractional quarter, the northwest fractional quarter of the northeast fractional quarter, and the northwest fractional quarter of the northwest fractional quarter of section two; the east half of the southeast quarter, and the southwest quarter of the southeast quarter of section eleven; the west half of the southwest quarter of section seventeen; the west half of the southwest quarter of

section twenty; the north half of the northeast quarter of section twenty-five; the north half of the northeast quarter, the southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter, the northeast quarter of the southwest quarter, and the southwest quarter of the southwest quarter of section twenty-seven; the south half of the northeast quarter, the northwest quarter, and the south half of section twenty-nine; the southeast quarter of the northeast quarter, the east half of the southeast quarter, and the southwest quarter of the southeast quarter of section thirty; the east half of section thirty-one; the north half, the northwest quarter of the southwest fractional quarter, the lots numbered one and two, the north half of the southeast quarter, and the southwest quarter of the southeast quarter of section thirty-two, and the north half and the northwest quarter of the southwest quarter of section thirty-three, containing in all two thousand seven hundred and seven acres and thirty-eight hundredths of an acre. according to the official plats of survey of the said lands returned to the General Land Office by the surveyor general, and for which the governor of the said State of Michigan did, on the thirty-first day of January, one thousand eight hundred fifty-four, request a patent to be issued to the said State as required in the aforesaid act.

Now therefore know ye, that the United States of America, in consideration of the premises, and in conformity with the act of Congress aforesaid, have given and granted, and by these presents do give and grant, unto the said State of Michigan, in fee-simple, subject to the disposal of the legislature thereof, the tracts of land above described, to have and to hold the same, together with all the rights, privileges, immunities and appurtenances thereto belonging, unto the State of Michigan, in fee-simple, and to its assigns forever.

In testimony whereof I, James Buchanan, President of the United

States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed. 214 Given under my hand at the city of Washington, the

seventeenth day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of the Inde-

pendence of the United States the eighty-first.

By the President:

SEAL.

15

JAMES BUCHANAN. G. H. JONES,

Ass't Secretary.

I. W. GRANGER,

Recorder of the General Land Office.

Recorded vol. 2, pages 213 to 223, inclusive.

After like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 114.

Township 18 North, Range 3 West, Mer. Mich.

Field-notes of U.S. survey of sections 20, 21, & from corner of sections 22, 23, 26, & 27, from which Beech, 10 S, 43 W, 651. Sugar, 18 N, 56 E, 431.

89° 15' E. Random between secs. 22 & 27.

40.17 Old qr. sec. corner. Set post. 80.34 Intersect N & S line at post.

V 89° 15' W. Corrected between secs. 22 & 27.

2.40 Lynn, 24 in.

13.00 Descend bank 12 ft. C. S E, N W.

14.00 Foot of bank in swamp C. S E, & W, N W. 29.81

Hemlock, 14 in. 32.32 Stream 50 L, C. S E.

34.50Leave Spy, bottom land C. S E, N W.

37.45 Stream 3 L, C. N E.

40.17 Old qr. sec. corner. Set post. Hemlock, 11 S, 62 E, 41.

Sugar, 16 N, 42 W, 4. 46.00 Descend bank 12 ft., C. N E, S W. 47.25Foot in bottom land C. N E, S W.

49,00 Ascend bank and leave bottom land, C. N W, S E.

50.56 Beach 11 & top of bank 18 ft.

65.00 Stream, 50 l. C. N E & S W & enter Spy land.

71.29Y. birch, 16 in.

77.00Leave bottom land, C. N E & W, S W.

80.34 'Section corner.

Hemleck, 5 N, 50 W, 13. Lynn, 16 S, 63 E, 17.

Surface rolling, land 2d rate. Sugar, beech, lynn, W. pine, hemlock, &c.

	00.02	Thersect is at 5 fine at post.
88	9° 15' W.	Corrected between secs. 21 & 28.
	6.18	Cedar, 16 in.
	7.50	
	15.00	
	24.75	
	25.10	Foot of bank.
	25.75	SE.
	26.70	Top of bank.
	33.80	F ,
	40.01	Set qr. sec. post. Hemlock, 13 N, 15 W, 15. Do 14 S, 20 E, 30.
	50.25	Hemlock, 14 in.
	69.95	Do. 16 "
216	80.02	Section corner.
		Surface, moderately rolling; land, 2d rate. Timber—W. pine, hemlock, beech, maple, sugar, lynn, B. oak, W. ash, &c.
N 8	9° 45' E.	Random between secs. 20 & 29.
	-40.00	Set temp'y post.
	80.24	Intersected N & S line at post.
8 8	9° 45′ W.	Corrected between secs. 20 & 29.
	8.96	Hemlock, 10, and enter swamp, C. N & S.
	20.00	Leave swamp, C. N E & S W.
	26.00	Enter swamp, C. N W & S. E.
	29.89	Cedar, 6 in.
	40.12	Set qr. sec. post.
		B. ash, 16 N, 10 W, 27½. Cedar, 8 S., 25 E, 3.
	41.50	Leave swamp, C. N E & S W.
	48.80	W. pine, 30 in.
	68.00	Enter swamp, C. N, N E & S W.
	70.10	B. ash, 8 in.
	75.00	Leave swamp, C. N E, S W.
	80.24	Section corner.
		Hemlock, 16 north, 27.
		Do. 13 S, 20 E, 33.
		Land, moderately rolling and poor, and broken by swales and swampy places. Timber—hemlock, W. pine, beech, maple, B. ash, tamarack, spruce, &c. No old work found.
N 2	4' W.	Between secs. 19 & 20.
	12.03	Hemlock, 14 in.
	33.54	Do. 16 "
	34.00	Enter swamp, C. N E, S W.

THE MICHIGAN LAND AND LUMBER CO., LIMITED, VS.

40.00 Set temp'y post. 80.02 Intersect N & S line at post.

Random between secs. 21 & 28 (no old line).

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N 89° 15' E.

217 40.00 Set 1 section post. Spruce, 8 S, 72 E, 19. Do. 8 S, 58 W, 311. No old qr. corner. 42.00 Leave swamp, C. N E. S W. 53.35 Hemlock, 13 in. 55.50 Enter swp, C. N E, S W. 70.00 Leave 72.34Sugar, 7 in. 80.00. Set post corner secs. 17, 18, 19 & 20. Hemlock, 17 N, 42 W, 23. 13 S, 34 E, 42. No old corner found. Land fair, 2d rate. Broken by swales and swampy places. Timber, hemlock, W. pine, beech, maple, sugar, B. & W. ash, B. oak, &c. No old work in this portion of the township. S 30' E. Random between secs. 22 & 23. 40.22 Latersect at qr. secs. corner. 80.42 E & W line at post. N 30' W. Corrected between secs. 22 & 23. 13.18 W. pine, 20 in. 33.42 Do. 36 " 40.20 Old qr. sec. corner set post. Maple, 12 N, 58 E, 191. Beech, 11 S, 48 W, 22 50.86 Y. pine, 17 in. 51.50 Enter mossy swale, nearly round. 54.00 Leave 4.6 60.00 Enter swale, C. N W & S E. 66.00 Leave 66 68.57 W. pine, 16 in. 218 80.42 Corner of secs 14, 15, 22 & 23. Set post old corner. Beach, 9 S, 8 E, 15. W. pine, 22 N, 61 E, 29. Land rolling, 2d rate. Timber, W. pine, hemlock, maple, sugar, beech, elm, lynn & Y. pine. S 89° 30' E. Random between secs. 15 & 22. 40.93 Intersect at qr. sec. corner. 80.17 Intersect N & S line at post. N 89° 30' W. Corrected between secs. 15 & 22. 5.22 Aspen, 12 in. 5.50 Enter swamp, C. North & S W. 12.50 Leave C. NE&SE.

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32.38

40.76

Beech, 11 in.

Old qr. sec. corner set post.

Do.

Hemlock, 13 N, 63 W, 231.

20 S, 20 W, 35.

49.46 Hemlock, 14 in.

56.50 Enter swamp, C. N E, S W.

59.00 Leave " " " "

65.00 Enter swamp, C. N & S.

66.75 Y. birch, 12 in.

75.50 Leave swamp, C. NW, SE.

80.17 Sec. corner.

Except swamp land, poor 2d rate. Timber, hemlock, W. pine, maple, beech, aspen, B. ash, cedar, &c.

N 89° E. Random between secs. 16 & 21.

40.00 Set tem'y post. No old line. 80.00 Intersects, N & S, line at post.

S 89° W. Corrected between secs. 16 & 21.

5.00 Enter swamp, C. N E, S W.

10.32 W. pine, 14 in. 20.00 Leave swamp, C. S. E. & N. E.

20.00 Leave swamp, C. S E & N E. 30.11 Hemlock, 18 in.

40.00 Set qr sec. post.

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W. pine, 28 S, 33½ W, 31. Do. 30 N, 12 E, 20.

49.59 W. pine, 14 in.

52.00 Enter swale, C. N W & S E.

54.25 Leave " " "

60.37 Maple, 12 in.

Section corner.
Land, level, 2d rate. Timber, W. pine, hemlock, beech, sugar, maple, in swales and swamps.
Cedar, tamarack, Y. birch, maple, & B. ash.

N 89° 39′ E. Random between secs. 17 and 20.

40.00 Set temp'y post.

80.00 Intersect N & S line at post.

 $S 89^{\circ} 39'$ W. Corrected between secs. 17 & 20.

0.70 W. pine, 30 in.

1.50 Enter swamp, C. N W & south.

16.00 Leave " C. N W & S E.

29.69 Beech, 12 in.

40.00 Set qr. section post.

W. pine, 36 N, 27½ W, 36. Hemlock, 12 S, 10 W, 14. No old qr. found.

47.50 Enter B. ash swale 150 lks, over C. N W & S E.

50.00 W. pine, 20 in. 77.89 Hemlock, 10 in

77.89 Hemlock, 10 in.80.00 Section corner. No old work.

Land good, 2d rate gravelly loam. Timber, W. pine, hemlock, beech, sugar, lynn, maple, B. ash & elm.

220 S 30' E. Random between secs. 21 & 22. 40.06 Intersect at qr. sec. corner. 80.24 Intersect E & W line at post. N 30' W. Corrected between secs. 21 & 22. 10.06 Lynn, 24 in. 15.82Stream, 5 l., C. S E. Do. 5 L, C. S W. 16.4529.15 Beech, 16 in. 39.20 Run 21, C. West. Old qr. sec. corner. Set post. Beech, 7 N, 80 W, 20. 40.18 Lynn, 11 S, 75 E, 15. 46.28 Lynn, 10 in. 62.87B. ash, 10 in. 75.40Hemlock, 12 in. 80.24 Section corner. Land for most part 1st rate. Loamy soil. Timber, sugar, beech, lynn, hemlock, W. pine, maple, &c. N 24' W. Between secs. 20 & 21. No old line. Enter swamp, C. N W & S E. 5.70 8.50 " S W & north. Leave 60 11.88 Hemlock, 9 in. Enter swamp, C. E and W. Leave "NE&SW. 12.50 18.70 31.81 Hemlock, 16 in. 33.00 Enter swale, C. N E & S W. (B. ash.) 40.00 Set qr. sec. post. B. ash, 14 north, 14. Elm, 7 S, 3 E, 6. Leave swale, C. N E & S W. 47.70 51.96B. ash, 14 in. 57.00 Enter swamp, C. E & W. 59.00 Leave " 221 69.00 Enter swamp, C. N E & S W. 71.77B. ash, 12 in. 75.00 Leave swamp, C. N E & S W. 80.00 Set post corner of secs. 16, 17, 20 & 21. Hemlock, 14 N, 451 W, 40. 18 S, 78 E, 21. Land level, swampy and poor. Timber, hemlock, W. pine, maple, beech, sugar, B. ash, &c, Field-notes of sections 28 & 29, from corner of sections 27, 28, 33 & 34. Hemlock, S, 45 E, 3. 15 N, 9 E, 29.

East.

80.70

Random between secs. 28 & 33.

No old line. From witness corner measured east 40 lks., thence N 24, W 85 lks., thence random. Intersect N & S line at post.

 164	THE M	ICHIGAN LAND AND LUMBER CO., LIMITED, VS.
West.		Corrected between secs. 28 & 33.
	10.73	W. pine, 10 in.
	21.70	
	30.58	
	32.70	
	40.35	
	10.00	500 41. 600.
		Beech, 8 N, 38 E, 22.
	51.23	Y. pine, 20 S, 45 W, 42. W. pine, 24 in.
	67.70	Lipo operan and had a last of the state of
	01.10	Line crosses southerly bend of stream 50 links, C. N E, and an inlet 5 lks.
	69.00	Leave bend of stream.
	73.23	Hemlock, 14 in.
	79.50	Enter river bettern (1 N.D. s. c. M.
	80.30	Enter river bottom, C. N E & S W. Stream, 6 lks., C. N E.
222	80.70	Section corner in stream.
	00.10	Land level fair 2d rate Timb w
		Land, level, fair, 2d rate. Timber—W. pine, beech,
		hemlock, lynn, alder, B. ash, tamarack, cedar & elm.
N 89°	30' E	Ост. 20тн, 1856.
41 00	40.00	Random between secs. 29 & 32.
	80.60	Set temp'y post.
	00.00	Intersect N & S line at corner in river.
8 89° .		Corrected between secs. 29 & 32.
	0.33	Leave river and set witness corner post.
		Cedar, 14 S, 60 W, 6.
		Lynn, 6 N, 54 W, 28.
	2.00	Leave river bottom, C. N.E. S.W.
	11.40	W. pine, 20 in.
	-30.40	W. ash, 16 in.
	40.30	Set qr. sec. post.
		Beech, 10 N, 30 W, 22.
		Hem., 11 S, 27 E, 27.
		No old qr. found.
	49.15	W. pine, 22 in., & enter swamp, C. N & S.
	50 60	Stream, 20 L, C. south.
	54.60	Ascend bank 28 ft., C. N & S & leave swamp C.
	** **	N. & S.
	55.35	Top, C. N & S.
	65.60	Descend bank 30 ft., & enter swamp, C., S E & N W.
	70.10	Stream, 50 l., C. south.
	70.80	Leave swamp, C. N & S.
	72.11	Hemlock, 16 in.
	80.60	Section corner.
		Land, for most, fair; 2d rate. Timber—hemlock,
		beech, W. pine, maple, sugar, elm, lynn, B. oak,
		&c.
		1401

N 24' W.

Between secs. 29 & 30.

9.40 Stream, 50 L, C. S, S E, and enter swamp, C. S, S E & W, N W.

13.99 Cedar, 8 in.

16.00 Leave swamp, C. N E & N W.

33.73 Sugar, 10 in.

Enter swamp, C. W, S W & E, N E. 36.00

40.00 Set qr. sec. post.

B. ash, 8 S, 20 W, 7. 22 N, 10 E, 43.

No old qr. found.

53.03 Balsam, 12 in.

61.00 Leave swamp, C. N W & S E.

63.00 Enter 66 C. E & W.

67.75 Stream, 15 l., C. east.

72.00Leave swamp, C. N E & S W.

74.24Hemlock, 10 in.

80.00 Set post corner secs, 19, 20, 29 & 30.

Maple, 14 S, 4 W, 11. Hem., 8 N, 38 W, 23,

No old corner found.

Land 3d rate, broken by swales and swampy places. Residue W. pine, hemlock, beech, balsam, B. ash, cedar, etc.; thick undergrowth of hemlock, beech, cedar, &c.

OCT. 23RD, 1856.

South.

Random between secs. 27 & 28.

No old line. 40.00 Set tem'y post.

80.33 Intersect 137 l. west of post.

N 1º W.

Corrected between secs 27 & 28.

10.00 B. ash, 14 in.

11.00 Enter swamp, C. S. W. N. E.

23.00 Leave " N E, S W.

224

30.47 W. pine 26 in.

40.161Set qr. sec. post.

W. oak, 12 S, 89 W, 35. W. pine, 20 east, 131.

50.31 Elm, 14 in.

72.11 W. pine, 14 in.

73.00 Enter bottom land, C. E & W.

75.73 Stream 50 L, C. east.

Old corner of secs. 21, 22, 27 & 28. 80.33

Set post in north border of bottom land.

C. N W & S E, on swampy land. Hemlock, 5 N, 50 W, 13.

Lynn, 16 S, 63 E, 17.

Land poor, 3d rate. Timber, W. pine, hemlock, beech, maple, B. ash, &c.

	AND EAST OF THE PARTY OF THE PA
166 THE 1	MICHIGAN LAND AND LUMBER CO., LIMITED, VS.
N 89° 15′ E.	Random between secs. 21 & 28. (No old line.)
40.00	Set tem'y post.
80.03	2 Intersect N & S line at post.
S. 89° 15′ W.	Corrected between secs 21 & 28.
6.18	B Cedar, 16 in.
7.50	1,
15.00	
24.75	
25.10	
25.78	Stream, 4 l.; C. S E, & ascend bank 10 ft.; C. N W & S E.
26.70	Top of bank.
33.80	
40.01	Set qr. sec. post.
	Hem., 13 N, 15 W, 15.
W.O. 17	Do. 14 S, 20 E, 30.
50.25	
69.95	
225 80.02	
	Surface moderately rolling. Land 2d rate. Tim-
	ber, W. pine, hemlock, beech, maple, sugar, lynn, B. oak, W. ash, &c.
N 89° 45′ E.	Random between secs. 20 & 29.
40.00	Set temp'y post.
80.24	Intersect N & S line at post.
8 89° 45′ W.	Corrected between secs. 20 & 29.
8.96	
20.00	Leave swamp, C. N E & S W.
26.00	Enter " C. N W & S E.
29.89	1
40.12	
	B. ash, 16 N, 10 W, 27½.
44 77	Cedar, 8 S, 25 E, 3.
41.50	
48.80	
68.00	Enter swamp, C. N, N E & S W.
70.10 75.00	B. ash, 8 in.
80.24	Leave swamp, C. N E & S W. Section corner.
00.24	Land moderately rolling and poor, broken by swales
	and swampy places. Timber, hemlock, W. pine, beech, maple, B. ash, tamarack, spruce, &c. No old work found.
N 24' W.	Between secs. 28 & 29. No old line.
.45	Leave river.
6.70	6 hatter land (1 N IN C (1 N)

Hemlock, 7 in.
Sugar, 11 in.
Set qr. sec. post.
Beech, 13 N, 75 W, 13½.
Sugar, 12 S, 65 E, 18.

6.70

 $\begin{array}{c} 11.45 \\ 32.29 \\ 40.00 \end{array}$

bottom land, C. N E & S W.

51.86 Hemlock, 7 in.

72.01 Do. 9 in.

226 80.00 Set post corner secs. 20, 21, 28 & 29.

Beech, 8 N, 8½ W, 10½. Do. 7 S, 12 E, 11.

Surface undulating, land 2d rate. Timber, W. pine, hemlock, sugar, beech, maple, lynn, elm, B. ash, alder and butternut.

Field-notes of Sec. 35 from Corner of Secs. 35 & 36.

Beech, 18 N, 43 W, 18. Do. 10 N, 42 E, 30.

West. Corrected on south side sec. 35,

8.06 Pine, 48. 31.31 Do. 20.

40.00 Set qr. sec. post.

Beech, 11 N, 80 E, 04. Maple, 13 N, 51 W, 21.

48.06 Pine, 20. 66.75 Do. 22.

80.00 Set post corner secs. 34 & 35.

Land rolling, 2d rate. Timber, hemlock, pine, beech, elm, maple. &c.

Aspen, 14 N, 23 E, 13. Do. 10 N, 28 W, 15.

N 24' W. Corrected between secs. 34 & 35.

10.67 W. oak, 14 in.

34.00 Enter swale, course N, N E & S, S W.

35.14 W. pine, 18 in.

36.50 Leave swale, courses N, N E & S, S W.

40.15 Old qr. sec. corner. Set post. W. pine, 20 N, 63 W, 16. Beech, 16 S, 10 E, 7.

45.72 Beech, 8 in. 65.59 Sugar, 14 in.

78.85 Corner of secs. 26, 27, 34, & 35.

Set post old corner.

Y. pine, 18 N, 48 W, 31½. Beech, 13 S, 68 E, 15.

Land moderately rolling, poor 2d rate. Timber, hemlock, W. pine, beech, maple, B. & W. oak, lynn, and some Y. pine. Undergrowth of hemlock & beech.

N 21' W. Corrected between secs. 35 & 36,

7.89 W. pine, 13 in. 33.11 Hemlock, 14 in.

38.73 Old qr. sec. corner. Set post. Beech, 10 S, 70 E, 53.

Hemlock, 16 N, 38 W. 48.

North. Corrected from qr. corner.

39.95 Hemlock, 10 in.

40.95 Run 7 lks., course east.

48.00 Enter swampy border of stream, C. N W & S E.

54.95 Stream 40 lks., course E, S E.

57.50 Leave swampy border of stream, course W, N W, and E, S E.

71.20 Beech, 18 in.

78.95 Old corner of secs. 25, 26, 35, & 36. Set post.

Hemlock, 18 N, 67 E, 56. Do. 20 S, 84 W, 60.

Surface moderately rolling. Land 2d rate. Timber, hemlock, beech, sugar, W. pine, lynn, elm, maple, Y. birch, cedar, & B. ash.

West. Corrected between secs. 26 & 35.

8.02 W. pine, 16 in.

18.00 Enter bottom land, course N W & S E.

23.07 Stream 50 lks., course S E, clear.

228 30.57 Cedar, 8 in.

40.23 Old qr. sec. corner. Set post.

W. pine, 16 S, 64 W, 35. Cedar, 17 S, 65 E, 50.

889° W. Corrected from qr. corner.

42.00 Leave swamp, course N W & S E.

49.50 B. ash, 9 in. 71.00 Beech, 9 in.

80.32 Section corner.

Except swamp land, poor 3d rate. Timber, W. pine, hemlock, beech, lynn. In swamp, B. ash, cedar, hemlock, and W. pine.

1, Geo. H. Cannon, of Washington, Macomb county, State of Michigan, a deputy surveyor, do solemnly affirm that in pursuance of a contract with Leander Chapman, surveyor general of Michigan, bearing date the — day of September, A. D. 1856, and in strict conformity to the laws of the United States and the instructions of the said surveyor general, I have faithfully and correctly resurveyed township No. 18 north, of range No. 3 west, in the State of Michigan, and I do further solemnly affirm that the foregoing are the true and original field-notes of said survey executed as aforesaid.

GEO. H. CANNON,

Deputy Surreyor.

Subscribed by said Geo. H. Cannon, dep. surveyor, and sworn to before me, at Detroit, this 26th day of Dec., 1856.

FRANCIS WM. HUGHES, Notary Public, Wayne County, Michigan. 229 After like offer, objection, ruling, and exception, defendant's counsel read

EXHIBIT 115

SURVEYOR GENERAL'S OFFICE, DETROIT, April 21, 1852.

SIR: Your letter of 13th inst. has been received, acknowledging receipt of swamp land lists transmitted with my letter of 31st ultimo, and relative to certificates of approval attached to said lists, etc.

The certificate for the Kalamazoo list does not appear to admit of doubtful construction, and I enclose a certificate for the Grand River list, similar to it, to be substituted for the original, which should properly have been attached in the form of an explanatory note.

The lists have all been made up strictly in accordance with your instructions, and are as near accuracy, doubtless, as can be attained without a survey on the field, which would be entirely unpracticable.

The paragraph in my letter to which you refer was misunder-No doubts were entertained by this office respecting the character of the unsold lands, and the explanation was intended to relieve any doubts which might arise from an examination of of the register's annotations at the department.

The remaining lists will be made up in conformity with your present instructions, leaving out of the lists all the tracts sold prior to 28th Sept., 1850.

Very respectfully your ob't serv't,

CHARLES NOBLE, Sur. Gen'l.

J. Butterfield, Esq., Comm'r.

Endorsed: No answer required, and the lists handed to Mr. Barnhill, P. D.

230 After like offer, objection, ruling, and exception, defendant's counsel read

Ехнівіт 116.

LAND OFFICE, IONIA, MICH., September 23rd, 1854.

Commissioner of the General Land Office.

Sir: It appears from the maps of the old survey of certain townships, that certain lands situate therein have been selected by the surveyor general as State swamp lands, and the resurvey maps of those townships indicate that those lands are not swamp lands, and the approved list of swamp lands received by us also indicate that those lands are not swamp lands, because they are omitted in the approved list. We desire to be informed whether in such case, when the lands have been resurveyed and found not to be swamp lands, 22 - 331

and not so designated on the approved list, the same are subject to private entry at this office.

Respectfully yours,

ALEXANDER F. BELL, Register.

And after like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 117.

GENERAL LAND OFFICE, Oct. 3d, 1854.

Register of the land office, Ionia, Michigan.

SIR: I am in receipt of your letter of the 23d ulto., relating to swamp and overflowed lands in your district.

In reply thereto I would state that you will regard all selections reported to you by the surveyor general as valid until such time as you are furnished by him with lists designated as "in lieu

of the originals in townships resurveyed and platted." Such lists will take the place of the originals, and give rise to the necessity of alterations in your tract books, which should be carefully made.

Where lands, however, have been approved, according to the old plats, no action can be taken thereon by you, until the claim of the State has been formally rejected.

Very respectfully your ob't serv't,

JOHN WILSON,

Commissioner.

After like offer, objection, ruling and exception, defendant's counsel read from the report of the commissioner of the State land office of Michigan, as

EXHIBIT 118

Report for the Year Ending November 30th, 1856—S. B. Treadwell, Commissioner.

Page 11:

After referring to his last report concerning swamp lands, he

savs

"Patents are now received for all these lands in the State except those situate in the Ionia land district, comprising about 1,200,000 acres, and for these we are assured the patents will soon be forwarded, the making of which have been delayed in consequence of extensive resurveys by the General Government, which in some instances changes the amount and character of the land." * * *

Page 12

After speaking of the application for the purchase of particular descriptions, he says they have been denied because "No valid sale could be made until after a compliance with the law requiring adventises and the same provided in the same p

vertisement of a public offering to be published in each county of the State; and such public sale or offering has not been deemed advisable until after the title of the State to the grant

should be wholly confirmed by the issue of the patents, and the numerous corrections and restatements of the lists necessary to be previously made by the department at Washington."

Page 14:

Speaking of the character of these lands, he says: "It is well known that many tracts, and sometimes almost entire sections, are now considered as among the best of farming lands, or extensively covered with pine and other valuable timber.

After like offer, ruling, objection, and exception, defendant's counsel read

Ехнівіт 119.

GENERAL LAND OFFICE, February 24th, 1855.

His excellency Kinsley S. Bingham, governor of Michigan, Lansing, Michigan.

SIR: The surveyor general of Michigan has transmitted to this office a list of swamp and overflowed lands in the Cheboygan district, Michigan, in townships "resurveyed and platted," which list "abrogates and supersedes all lists of swamp lands heretofore made of the townships contained within it."

Said list embraces selections in the following townships, viz:

Townshim	611	.16																											
Townships	21,	2.0					٠			 					٥												Range	4	Wast
* *	22,	23								 															•	•		-	west.
**	22,	93		.)	1						•	•	•		•	• •		•			*	•				•		9	
+4	20	00	,	0			٠	۰	•	 	*	•		•	6						٠	٠	٠	•			16	6	44
	22,	20	,	2.	0 .					 																	8.6	7	44
	21,	22	,	2.	ł,	2	.)			 																	44	i	44
**	22,	23		9.	1	9	5												Ť	•	•	•	•					0	
*4	96	-	,	-	.,	_	.,				•	•					*	*							 			9	66
	26.						٠																	 	 		" 1	()	64

The original selections in the foregoing townships, made from the defective plats, were approved in lists No. 1, 2 and 3 in the Ionia district, Michigan, certified copies whereof were transmitted to your predecessor, January 13, 16 and 18, 1854.

233 In consequence of the alteration necessary, by reason of the list recently received, I have the honor to request a suspension of all action upon the lists heretofore furnished you, so far as these several townships are concerned, until the differences can be ascertained and adjusted.

With great respect, your ob't serv't,

JOHN WILSON, Commissione: . After like offer, objection, ruling and exception, defendant's counsel read from the report of the commissioner of the State land office for 1855 as

Ехнівіт 120.

Report of the Year Ending November 30th, 1855—Seymour B. Treadwell, Commissioner.

Swamp lands.

Page 9:

"Patents not having been received during the past year at this office for the lands embraced in the lists heretofore received from the department at Washington of the swamp and overflowed lands granted to this State by the act of Congress of September 28th, 1850, no sales or public offering of this class of lands have been made.

The patents heretofore received embrace the lands of that description located in the Detroit, Genesee, and Kalamazoo land districts,

These patents we have carefully compared with the lists, and made the proper entries upon the plats and tract books in this office. Many descriptions contained in the list of these lands were erroneously sold at the different land offices of the United States, subse-

quent to the date of the grant to the State, and such sales
were afterwards directed by the department at Washington
to be canceled and the purchase money or

to be canceled, and the purchase-money or warrants to be refunded to the purchasers, on return of their duplicates. In many cases such duplicates have been returned by the purchasers, and under the provisions of act No. 76 of the legislature of this State, approved February 13, 1855 (being acts 'for the relief of purchasers of and settlers on swamp lands'), many of such purchasers and pre-emption claimants have filed in this office the evidence required by said acts, to entitle them to purchase of the State at the rate prescribed in said acts, viz., one dollar and twenty-five cents per acre. Upon examination of the patents, so far as received, we find that such descriptions so erroneously sold by the United States have been omitted from the patents, and this office has therefore, as yet, been unable to confirm the title of these purchasers, or to authorize the issue of patents to them from the proper State department."

Page 11 refers to act of Congress of March 2d, 1855, and says:

"That a list of the sales of swamp land made by the State was
prepared, and, as required by said act, duly transmitted to the department at Washington, and a comparison made as to such con-

flicting sales.

"This State having, by the act approved June 28th, 1851, accepted the grant upon the basis of the notes of the surveys on file in the surveyor general's office, I am advised by letter from the Commissioner of the General Land Office that no further proof will be considered necessary in determining the character of the lands granted. This office was notified in February last, by letter from the Commissioner of the General Land Office, of the resurvey by the General Government of considerable tracts of land, embraced in the

lists of swamp lands, including several townships in the northern part of the State, situate principally in the Ionia land district, and the same have been, as directed, marked as suspended on our books. Information has also been received from the surveyor general's de-

partment that resurveys of a large number of townships in which swamp lands are included, in the northern part of the State, have been in progress the past season. Whether any material difference in the quantity of land enuring to the State under the act of Congress will be effected by such resurveys cannot as yet be ascertained."

Page 12:

"The necessary preliminary steps not having been concluded by the department at Washington to perfect the transfer of the largest portion of these lands, as under the provision of the grant and the judicial construction alluded to in the last report of my predecessor would seem to be requisite in order to vest their disposal in the State, it has not been deemed advisable heretofore, for the reasons named, to again offer the remaining unsold lands in the three districts for which patents were received."

And after like offer, objection, ruling, and exception defendant's counsel read

Ехнівіт 121.

GENERAL LAND OFFICE, June 18th, 1864.

Arnold Kaichen, Esq., register. Detroit, Mich.

SIR: In reply to that portion of your letter of the 13th inst. having reference to swamp lands, I have to state that the list of swamp selections transmitted to you under the date of April 15th, 1864, was made from the field-notes of the old surveys. After the resurveys were made, new selections of swamp lands were also made and transmitted to this office, but before these new selections were received the office had approved and patented to the State most of the selections for the same townships under the old surveys. This was the case with the townships included in the list sent you on the 15th April last.

The "supplemental list D" to which you refer was made from the resurveys, and was originally intended to abrogate or supersede

the old list in the townships contained in said "supplemental list D," but inasmuch as the selections under the old surveys in that portion of the Detroit district had been acted upon and carried into patent that course was found to be impracticable.

As this office cannot recognize two lists of swamp selections for the same townships made from different and conflicting surveys, and having, as stated, acted upon *one*, we must of necessity ignore the other.

You will, therefore, consider the *original list* made under the *old* surveys, a copy in part of which was sent you on 15th April last as being the only list to govern you in the townships therein contained.

In reference to sec. 23, T 31 N, R. S E, mentioned in your letter,

it appears from our records that the whole of fractional section 23 (old surveys) was selected as swamp land, and the following tracts in that section have been approved and catented to the State as swamp, viz:

N W ‡ 23, Lot No. 1,														
" " 3, N W 1 of	V F 1	99 9	1 0	 •	٠.		• •						32.17	44

The remainder of the section was sold prior to the passage of the swamp grant.

Very respectfully, your ob't serv't, (Signed) J. M. EDMUNDS, Commissioner.

237 After like offer, objection, ruling, and exception, defendant's counsel read from the report of the Commissioner of the General Land Office for 1864, as

EXHIBIT 122

Page 17, 1864, Sec. of Int.:

Discrepancies in Michigan swamp selections have arisen creating embarrassment both in the United States and State governments, growing out of the fact that certain townships in that State, in which the original surveys had been found defective, swamp selections were made from the field-notes of those defective surveys, and subsequently resurveys were made, and from the piats of the latter other and different selections in the same townships were reported. Prior to the reception of these we had approved and patented to the State most of the selections made under the old or defective surveys. New selections cannot, therefore, be admitted in the same townships where the first or old ones had been patented.

To remove the difficulty and enable the United States to give to Michigan a good title to the swamp tracts and dispose of the residue or fast lands in such townships, it is necessary for the State to relinquish her title to the swamp tracts acquired under the old surveys, taking in lieu thereof an equal quantity of such lands described

as swamp in the new surveys.

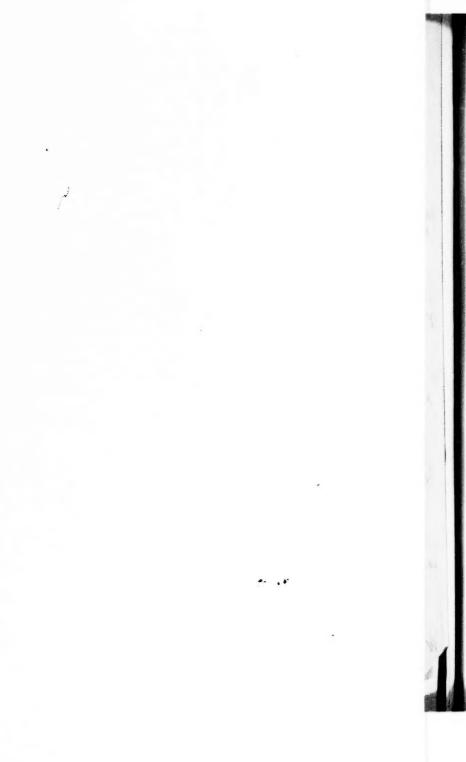
After like offer, objection, ruling, and exception, defendant's counsel put in evidence the following plat of resurvey of township 18 north, of range 3 west, State of Michigan, and same was marked

EXHIBIT 123

(See opposite page.)

(Here follows diagram marked page 237a.)

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILME



After like offer, objection, ruling and exception, defendant's counsel read from the records of the State land office

Ехнівіт 124.

(Original.)

Supplemental List No. 3.

List of swamp or overflowed lands prepared under the act of Congress approved Sept. 28, 1850, and in accordance with instructions from the Commiss'r of the General Land Office, situate in Grand River land district, in the State of Michigan, in townships resurveyed and platted to May 1, 1858, this list being intended to supersede or be in place of lists of swamp lands heretofore made of townships contained in it.

Description. $\hat{\tilde{Z}}$	Town.	Range.	Contents.	Remarks.
N E fr. 4 N W fr. 4. 1	NN	3 W	39.62	N. P.*
S E 1 N W fr. 1 "	"	66	40.00	N. P.
N W fr. \(\frac{1}{4}\) N W fr. \(\frac{1}{4}\). 4	6.6	1."	41.67	
S W 1 N W fr. 1 "	66	1	40.00	
NW 1 SW 1 "	66	1	40.00	
N E fr. 1 N E fr. 1. 5	44	1.	41.92	
S E \ N E fr. \ \ "	4.6	/ "	40.00	
S W \ S W \ \ \ "	"/	44	40.00	
NE 4 SE 4 "	"/	4.6	40.00	
$S_{\frac{1}{2}} S E \downarrow \dots $	1	4.6	80.00	
$SW \downarrow NE \text{ fr. } \downarrow \dots 6$	ľ	4.6	40.00	
N E fr. 1 N W fr. 1. "	*	4.6	39.95	
S E \(\frac{1}{4} \) N W fr. \(\frac{1}{4} \) "	"	6.6	40.00	
$E_{\frac{1}{2}}SW$ fr. $\frac{1}{4}$	44	1."	80.00	
S E 1 "	4.6	1	160.00	
$NE \downarrow NE \downarrow \dots$ 7	44	4	40.00	
$W \stackrel{1}{=} N W \downarrow \dots S$	"	1	80.00	
S E 4 N W 4 "	44	1.	40.00	
N 1 S W 1 "	"	"	80.00	
239 SE SW 1	18/N	3 W	40.00	
SW 4 SE 4. "	1	66	40.00	
$N_{\frac{1}{2}} N \to 1$	f.	6.6	80.00	
S W N E 14	1,	4.6	40.00	*N. P. Sold prior to the resurvey.
N 1 N W 1	1	4.4	80.00	N E of N W N. P.
S E ‡ N W ‡ "	.4	66	40.00	N. P.
N W 1 D E 1	"	44	40.00	N. P. Sold prior to the resurvey.
$N \to \{N \to \{\dots, 17\}$	"	44	40.00	N. P. " " " "
$S \to \{S \to \{\dots \dots 19\}\}$	4.6	/"	40.00	N. P.
S W 4 S E 4 26	66	1	40.00	

^{*} Small type under "Remarks" in pencil in original copy.

Description. $ \overset{\widetilde{\varphi}}{Z} $	Town.	Range.	Contents.	Remarks.
$\begin{array}{cccccccccccccccccccccccccccccccccccc$	NS N	3 W	80.00 80.00	SE of SW N. P.
W ½ S E ¼	"		40.00 80.00 80.00 40.00	N. P. S W of S E N. P. S W of N E N. P.
N ½ S W ¼		"	80.00 80.00 40.00 160.00	N. P. N. P.
E ½ N W fr. ¼ " N W fr. ¼ N W fr. ¼. " N ½ S E ¼ " S W ¼ S W ¼ 34		"	80.00 54.17 80.00 40.00	
N E \\ \frac{1}{2} \ N W \\ \\ \frac{1}{2} \ N W \\ \frac{1}{2} \ N W \\ \frac{1}{2} \ N W \\ \frac{1}{2} \ \frac{1}{2} \ N W \\ \frac{1}{2} \		V	160.00 80.00 38.02	2,817.33 + N. P.
$\begin{array}{cccccccccccccccccccccccccccccccccccc$: /	<i>f.</i>	38.02 80.00 80.00 40.00	6-73. N. P., 6-73. N. P. N. P.
N W fr. \(\frac{1}{4}\) N E fr. \(\frac{1}{4}\). \(\frac{2}{5}\) \(\frac{1}{2}\) N E fr. \(\frac{1}{4}\). \(\frac{4}{5}\) N E fr. \(\frac{1}{4}\) N W fr. \(\frac{1}{4}\). \(\frac{4}{5}\) N W fr. \(\frac{1}{4}\). \(\frac{4}{5}\)		44 44 44	37.47 80.00 37.11 36.75	S. W ‡ of N E ‡, N. P., 6-73. N. P. S E ‡ of N W of 2, 6-73.
NE 4 S E 4. "	1	W	40.00 40.00 40.00 80.00	N. P., 6-73. * N. P.
$ \begin{array}{cccccccccccccccccccccccccccccccccccc$)	40.00 80.00 60.00	N. P. N. P. N. P.
$egin{array}{cccccccccccccccccccccccccccccccccccc$	1	10	80.00 60.00 80.00	N. P. N. P. N. ½ of N E ‡, N. P.
S E ‡	1	1 1	60.00 * 60.00 * 80.00 60.00	
S E \\ N E \\ \\ \\ \\ \\ \\ \\ \\ \\ \\ \\ \\ \	" \		30.00 50.00	

^{*} Small type under "Remarks" in pencil in original copy, † 2,817.33 in red iak in original.

Description.	Town.	Range.	Contents.	Remarks.
$\begin{array}{cccccccccccccccccccccccccccccccccccc$	187	4 W	$160.00 \\ 40.00 \\ 40.00$	
S W fr. lot S W fr. 4. " N 1 N E 1	("	38.67 80.00	6-73,
$N \stackrel{1}{=} N W \stackrel{1}{\downarrow} \dots \dots$	14	-	80.00	2,666.04†

^{*} Small type under "Remarks" in pencil in original copy. † 2,666.04 in red ink in original.

I certify that the foregoing list of swamp and overflowed lands, prepared under act of Congress Sept. 28th, 1850, has been correctly made from the original plats of townships that have been resurveyed in the Grand River land district in the lower peninsula of Michigan.

C. L. EMERSON. Su've'r Gen'l.

Surveyor general's office, St. Paul, May 13th, 1858.

After like offer, objection, ruling and exception, defendant's 241 counsel read

Ехнівіт 125.

SURVEYOR GENERAL'S OFFICE, St. PAUL, May 12, 1858.

Hon'ble Thos. A. Hendricks, Commiss'r General Land Office, Washington, D. C.

Sir: I have this day forwarded to you in separate packages the following supplemental lists of swamp or overflowed land in the lower peninsula of Michigan in townships that have been resurveyed and platted since the date of the last supplemental lists of same land districts, to wit, the "Cheboygan," "Grand River" and "Saginaw" land districts.

These lists complete the swamp land lists for Michigan, with the exception of T. 28 N, R. 1 W, & a portion of Jos. Knauer's district N. of the correction line & E. of the meridian, which required correction in the field before they could be approved.

Duplicate copies of the above lists have been forwarded to the registers of the respective land offices.

I am, very respectfully, your obed't serv't,

C. L. EMERSON, Sur. Gen't.

And after like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 126.

GENERAL LAND OFFICE, May 20th, 1858.

C. L. Emerson, Esq., surveyor general, St. Paul, Minnesota.

SIR: I have to acknowledge the receipt of your letter of the 12th instant transmitting three lists of swamp-land selections under the act of September 28th, 1850, to supersede the lists of such

lands heretofore reported to this office, made in the townships therein described, viz:

Original supplemental list E, Cheboygan dist.
Do. "No. 2 Saginaw"

Do. "No. 2, Saginaw"
Do. "No. 3, Grand River dist.

All in Michigan.

Very respectfully, your ob't serv't,

THOS. A. HENDRICKS,

Commissioner.

After like offer, objection, ruling and exception, defendant's counsel read from a certified copy from the State land office of Michigan

Ехипыт 127.

Approved List No. 10, Ionia.

No. 10.

A list of swamp and overflowed lands selected as enuring to the State of Michigan under the provision of the act of Congress approved September 28th, 1850, in the district of lands subject to sale at Ionia, Michigan.

	Sec.	Town. N.	Range W.	Acres.
N W fr'l 4 of N W fr'l 4	4	15	3	41.67
SW 4 of NW frl 4	-4	"	"	40.00
N W 1 of S W 1	-4	66	1	40.00
N E fr'l \ of N E fr'l \ \	5	6.6	")	41.92
S E 1 of S W 1	5	6.6	/	40.00
S W 1 of S W 1	5	"	/ "	40.00
N E 1 of S E 1	.)	"/	4.4	40.00
S 1 of S E 1	.5	(6.6	80.00
SW 1 of NE 1	- 6	1	6.6	40.00
SE 1 of NW frl 1	-6	46	"	40.00
$\mathbf{E}_{\frac{1}{2}}$ of \mathbf{S} W fr'l $\frac{1}{2}$	6	6 0	")	80.00
S E 4	6	6.6	1	160.00
N E 4 of N E 4	7	4.6	/	40.00
$W_{\frac{1}{2}}$ of $N_{\frac{1}{2}}$ of $N_{\frac{1}{2}}$	8	"/	11	80.00
S E ‡ of N W ‡	8		6.6	40.00

Erasure in pencil in original copy.

	Sec.	Town. N.	Range W.	Acres.		
243 N ½ of S W 4	8	18	3	80.00		
SE i of SW 1	8	"	11	40.00		
SW 1 of SE 1	8	4.6	1.	40.00		
N b of N E 1	12	4.4	4	80.00		
NW tof NW l	1.4	+4	1	40.00		
S W ‡ of S E ‡	26	6.6	1"	40.00		
NE of NE	28	"	- 16	40.00		
S ½ of N E 4	28	"/	66	80.00		
N E 4 of S W 4	28	4	6.6	40.00		
N 1 of S E 1	28	t	4.5	80.00		
N d of N E d		1	6.6	80.00		
NE of NW	29	/	64	40.00		
S 1 of N W 1	29	4.4	1.	80.00	160359	
NE 1	30	6.6)	160.00		
E 1 of N W 1	30	0.6	1	80.00		
N W 4 of N W 4	30	4.6	/"	40.00		160359
N 1 of S E 1	30	"/		80.00		
N E 4	36	"/	6.0	160.00		
E ½ of N W ¼	36	1	44	80.00		
		1.	W.			
Lot No. 1	25		3	20.94		
Lot No. 3	25	"	44	40.01		
S E ‡ of S W 1	25	44	1.	40.00		
N E 1	36	5 4	•)	160.00		
N W 1	36	66	1.	160.00		
	36	16	66	160.00		

Erasures and small figures in pencil in original.

GENERAL LAND OFFICE, May 15, 1866.

This is to certify that the foregoing tracts of land were duly reported to this office as swamp land, and that they have been carefully tested with the field-notes of public surveys and plats, and found therefrom to be swamp and overflowed lands.

FINLEY C. LATTIMORE, Clerk.

GENERAL LAND OFFICE, May 15th, 1866.

Respectfully submitted for approval.
(Signed)

J. M. EDMUNDS,

Commissioner.

Department of the Interior, May 18th, 1866.

The foregoing list of selections is hereby approved, subject to any valid legal rights that may exist to any of the tracts therein described.

(Signed)

JAS. HARLAN, Secretary.

GENERAL LAND OFFICE, May 26th, 1866.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the foregoing is a true copy of approved list No. — of swamp and overflowed lands selected as enuring to the State of Michigan under the act of Congress approved September 28th, 1850, in the district of lands subject to sale at Ionia, Michigan.

In testimony whereof I have hereunto subscribed my name and caused to be affixed the seal of the General Land Office, at the city

of Washington, the day and year above written.

J. M. EDMUNDS, Commissioner.

After like offer, objection, ruling, and exception defendant's counsel read

Ехигит 128.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, May 26th, 1866

His excellency the governor of Michigan, Lansing, Mich.

SIR: I have the honor to transmit herewith a certified copy of approved list No. 10 of swamp and overflowed lands in the Ionia district, selected as enuring to the State of Michigan under the act of

Congress approved Sept. 28th, 1850, embracing 7,071.45 acres.
You will please to acknowledge the receipt of said list, and transmit your request for the patent to issue, on the receipt of which, or as soon thereafter as practicable, patent will be issued

very respectfully, &c., J. M. El

J. M. EDMUNDS,

Commissioner.

After like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 129.

STATE OF MICHIGAN, EXECUTIVE OFFICE, LANSING, May 31, 1866.

Hon, J. M. Edmunds, Commissioner of the Gen'l Land Office, Washington, D. C.

SIR: I have the honor to acknowledge the receipt of a certified copy of approved list No. 10 of swamp and overflowed lands in the Ionia district, selected as enuring to the State of Michigan under the act of Congress approved Sept. 28th, 1850, embracing 7,071.45 acres.

I also have the honor to request that the patents for said lands may issue to the State of Michigan, as soon as practicable, conveying the fee-simple title thereof to said State.

I have the honor to be, very respectfully, yours, &c., HENRY H. CRAPO,

Governor of Michigan.

After like offer, objection, ruling and exception, defendant's counsel read from a certified copy from the State land

Ехнівіт 130.

No. 20.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come, Greeting:

Whereas by the act of Congress approved September 28, 1850, entitled, "An act to enable the State of Arkansas and other States to reclaim the 'swamp lands' within their limits," it is provided that all the "swamp and overflowed lands" made unfit thereby for cultivation within the State of Michigan, which remained unsold at the passage of said act, shall be granted to said State.

And whereas in pursuance of instructions from the General Land Office of the United States, the several tracts or parcels of land hereinafter described have been selected as swamp and overflowed lands, enuring to the said State under the act aforesaid, being situated in the district of lands subject to sale at Ionia, Michigan, to wit:

Township 18 N. R 3 west.

The northwest fractional quarter of the northwest fractional quarter, the southwest quarter of the northwest fractional quarter, and the northwest quarter of the southwest quarter of section four; the northeast fractional quarter of the northeast fractional quarter, the southeast quarter of the northeast fractional quarter, the southwest quarter, the southwest quarter, and the south half of the southeast quarter of section five; the southwest quarter of the northeast quarter, the southeast quarter of the northwest fractional quarter. the east half of the southwest fractional quarter, the east half of the

southwest fractional quarter, and the southeast quarter of section six; the northeast quarter of the northeast quarter 247 of section seven; the west half of the northwest quarter, the southeast quarter of the northwest quarter, the north half of the southwest quarter, the southeast quarter of the southwest quarter, and the southwest quarter of the southeast quarter of section eight; the north half of the northeast quarter of section twelve; the northwest quarter of the northwest quarter of section fourteen: the southwest quarter of the southeast quarter of section twenty-six: the northeast quarter of the northeast quarter, the south half of the northeast quarter, the northeast quarter of the southwest quarter, and the north half of the southeast quarter of section twenty-eight; the north half of the northeast quarter, and northeast quarter of the northwest quarter, and the south half of the northwest quarter of section twenty-nine; the northeast quarter, the east half of the northwest quarter, the northwest quarter of the northwest quarter, and the north half of the southeast quarter of section thirty; the northeast quarter, and the east half of the northwest quarter of section thirty-six; containing in all two thousand two hundred and three acres and fifty-nine hundredths of an acre.

Township 28 N, R 3 west.

The lot numbered one, the lot numbered three, and the southeast quarter of the southwest quarter of section twenty-five; the northeast quarter, the northwest quarter, and the southwest quarter of section thirty-six; containing in all five hundred and eighty-one acres and ninety-five hundredths of an acre, according to the official plats of survey of said lands returned to the General Land Office, by the surveyor general, and for which the governor of the said State of Michigan did, on the thirty-first day of May, one thousand eight hundred and sixty-six, request a patent to be issued to the said State, as requested in the aforesaid act:

Now, therefore, know ye, that the United States of America, in consideration of the premises and in conformity with the act of

248 Congress aforesaid, have given and granted and by these presents do give and grant unto the said State of Michigan, in fee-simple, subject to the disposal of the legislature thereof, the tracts of land above described.

To have and to hold the same, together with all the rights, privileges, immunities and appurtenances thereto belonging, unto the said State of Michigan, in fee-simple, and to its assigns forever.

In testimony whereof, I, Andrew Johnson, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

[SEAL.] Given under my hand at the city of Washington, the twenty-first day of June, in the year of our Lord one thousand eight hundred and sixty-six, and of the Independence of the United States the ninetieth.

By the President:

ANDREW JOHNSON, By EDW. D. NEILL, Secretary. I. W. GRANGER,

Recorder of the General Land Office.

Recorded vol. 2, pages 296 to 298 inclusive.

After like offer, objection, ruling and exception, defendant's counsel read

Ехигвіт 131.

K. Department of the Interior. H. A. W. General Land Office, E. K. Washington, D. C., March 25th, 1873.

His excellency the governor of Michigan, Lansing, Mich.

Sir: I have the honor to acknowledge the receipt of your letter of the 4th inst., addressed to the Secretary of the Interior, referred by him to this office, enclosing a list of lands in townships 35, 36, 37, 38 and 39 N, R 3 W, Mich., asking that said lands be patented to the State of Michigan as swamp lands.

In reply I have to state that an examination of our records shows that the lands described in the list transmitted by you were selected as swamp lands in 1852, and were shortly afterwards approved, but

never patented to the State.

Upon credible representations that the surveys in the abovementioned townships and range (under which the selections were made) were imperfect and defective, a resurvey was ordered, and new swamp-land selections were reported to this office to supersede the list reported under the defective survey.

In the list reported under the resurvey the greater part of the lands described in the list accompanying your letter do not appear, consequently they are not recognized by this office as swamp selec-

tions.

250

The swamp-land selections in the aforesaid townships and range which were reported under the resurvey have been suspended from patent on account of the order of the President reserving said lands for Indian purposes.

Very respectfully, your ob't s'v't,

WILLIS DRUMMOND,

Commissioner.

After like offer, objection, ruling, and exception, defendant's counsel read

Ехнівіт 132

APRIL 15TH, 1875.

Hon. S. S. Burdette, Com'r General Land Office, Washington, D. C.

SIR: I have the honor to transmit herewith a list of swamp and overflowed lands in townships 35 and 36 N, R 3 west, contained in supplemental list "C," Cheboygan (now Traverse City) land district of townships resurveyed. Approval and patents to the State

had heretofore been suspended on account of the order of the

President reserving said townships for Indian purposes. The suspension having now been removed, I respectfully request that the lists of lands herewith enclosed be approved and patented to the State at an early day.

Very resp'ly, your ob't servant, L. A. CLAPP, Com'r State Land Office.

After like offer, objection, ruling, and exception, defendant's counsel read

Ехигвіт 133.

" K." DEPARTMENT OF THE INTERIOR, H. W. B. GENERAL LAND OFFICE, E. K. Washington, D. C., Nov. 10, 1875.

His excellency the governor of Michigan, Lansing, Mich.

SIR: Your letter of the 28th ult. is received, calling our attention to a list of lands in townships 35 and 36 north, of range 3 west, Michigan, transmitted to this office by commissioner of State lands

with his letter of 15th April last. In reply, you are informed that said list has been compared with the official records, and such tracts embraced therein as have been found free from conflict have this day been submitted to the Secretary of the Interior for approval to the State of Michigan as swamp and overflowed lands.

Very respectfully,

W. W. CURTIS,

Acting Commissioner.

251 After like offer, objection, ruling, and exception, defendant's counsel read from the records of the State land office.

Ехнівіт 134.

No. 22.

A list of swamp and overflowed lands selected as enuring to the State of Michigan under the provision of the act of Congress approved September 28, 1850, in the district of lands subject to sale at *Traverse City*, viz:

Parts of sections.	Sec.	T. N.	R. W.	Acres.	
Lot No. 1	6	35	3	43.60	
" 2	6			39.92	
" " 3	6			29.45	
S W of N W fr.	- 6			27.20	
N W 1 " S W fr. 1	6			27.20	
SW 4 "SW frl 1	6			27.20	
Fractional	22			39.04	
E ½ of N E ¼	25			80.00	
S E. 1	25			160.00	
N E of N E	28			40.00	
SE4 " NW4	28			40.00	
N W 1 " S W 1	28			40.00	
NE4 " SE1	29			40.00	
SE1 " SW1	29			40.00	
SWI "SWfr. L	30			26.82	
NW # " NW fr'l	31			27.30	
E ½ " N W ‡	31			80.00	
S W # " N E #	31			40.00	
	31			40.00	
South half	32			320.00	
SW of SW				40.00	
NEI "NEI	36			40.00	
	36			80.00	
SEI "NWI	36			40.00	
SW1 "SW1	36			40.00	
E 1 " S W 1	36			80.00	
NW 4 of SE 4	36			40.00	1,567.73
4 02 0 22 4	90			40.00	1,007.10

Parts of sections.	Sec.	T.	R. W.	Acres.
252 N E fr. 4	1	36	3	157.30
E 5 Of N W fr. 1	**	0.,	o	75.78
SEIr. J	1			165.62
Lot No. 1	3			29.50
" " 2	4.6			32.85
SW torn W t	3			40.00
N W 4 " N E fr. 4	4			37.38
5 5 NE 1	4			80.00
La N W f	4			77.63
5 0 W 1	4			80.00
NW of SE	4			40.00
Lot No. 1	4			39.40
4	4			21.40
0	-4			24,30
4	4			21.85
0	4			34.55
1	8			35.35
4	S			21.20
W ½ of N E ¼	8			80.00
Fraction of	9			1.15
E 1 of S E 1.	11			80.00
S W of S E N E W N E fr'l	11			40.00
	12			43.43
	12			43.93
	12			43.89
SW 4 of NW 4 SE 1 "NW for 1	12			44.86
	12			44.36
NW4 "SW fr. 4	12			43.12
Lot No. 3	14			14.30
" " 4	14			24.90
Lot No. 3	14			8.65
	17			47.05
NW of NW fr.	17			46.20
N W of N W fr. S W " N W fr.	18			26.94
	18			26.82
V 117 1 44 C2 117 2	18			40.00
SWI"SWfr I	18			26.70
E i "S W fr. i	18			26.57
E 1	18			80.00
S W of N W fr.	19			26.47
253 NE 1 of NW 1	19			26.41
NW1" NE1	19			40.00
SE 4 of NE 4	19			40.00
0.1	19			40.00
SEI "SWI	19			60.00
W 1 " S W fr 1	19			40.00
	19 19			26.35
V W 1	20			26.29
24-331	20		10	60.00

Parts of sections.	Sec.	T.	R.	Acres.	
		N.	W.		
Lot No. 1	20			15.80	
" " 2	20			26.20	
" " 3	20			29.30	
N E 1 of S W fr. 1	20			29.50	
N W ‡ " S W fr. ‡	20			29.30	
S W i "S W fr. i	20			42.20	
Lot No. 3	29			59.40	
" " 4	29			34.00	
" " 5	29			34.35	
N W 1 of N W fr. 1	29			42.32	
N E 4	30			160.00	
E ½ " N W ↓	30			80.00	
N W ‡ " N W ‡	30			25.94	
SW 1 " NW fr. 1	30			25.30	
N W \ \ " S W fr. \ \ \ \	30			24.66	
S W # " S W fr. #	30			24.02	
E ½ " S W ¼	30			80.00	
S Ē 4	30			160.00	
Lot No. 1	31			36.90	
" " 2	31			39.35	
" " 4	31			29.90	
a = a 5	31			32.60	
" " 6	31			48.59	
N W 1 of N W fr. 1	31			24.23	
Fractional	32			20.45	3,586.8
Grand total					5,154.5

GENERAL LAND OFFICE, November 9, 1875.

This certifies that the tracts described in the foregoing list were duly selected and reported to this office as swamp land prior to the passage of the confirmatory act of March 3, 1857, and from 254—an examination of the tract books it appears that said lands are vacant and unappropriated, and not interfered with by any actual settlement under any existing laws of the United States.

H. W. BABBITT, Exam'q Clerk.

E. KILLPATRICK,

Head of Swamp Division.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, Nov. 9, 1875.

Respectfully submitted for approval.

W. W. CURTIS, Acting Commissioner.

DEPARTMENT OF THE INTERIOR, November 11, 1875.

The foregoing swamp-land selections are hereby approved, subject to any valid legal rights that may exist thereto.

Z. CHANDLER, Secretary.

I, S. S. Burdett, Commissioner of the General Land Office, certify that the foregoing is a true copy of approved list No. 22, of swamp and overflowed lands, selected as enuring to the State of Michigan, under the provisions of the act of Congress approved September 28, 1850, in the district of lands subject to sale, at Traverse City.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the General Land Office to be affixed, at

[SEAL.] the city of Washington, the 16 day of Nov., 1875.

S. S. BURDETT, Commissioner

* "Received at Lansing, Nov. 27, 1875." "Compared, and all is in patent."

After like offer, objection, ruling, and exception, defendant's counsel read from the records of State land office.

Ехнівіт 135.

No. 35.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come, Greeting:

Whereas, by the act of Congress approved September 28, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the 'swamp lands' within their limits," it is provided that all the "swamp and overflowed lands" made unfit thereby for cultivation, within the State of Michigan, which remained unsold at the passage of said act, shall be granted to said State.

And whereas, in pursuance of instructions from the General Land Office of the United States, the several tracts or parcels of land hereinafter described have been selected as "swamp and overflowed lands" inuring to the said State under the act aforesaid, situate in the district of lands subject to sale at Traverse City. Michigan, to

wit:

Town 35 north, range 3 west.

The lots numbered one, two and three, the southwest quarter of the northwest quarter, and the west half of the southwest quarter of section 6; the whole of fractional section twenty-two; the east half of the northeast quarter, and the southeast quarter of section twenty-five; the northeast quarter of the northeast quarter, the southeast quarter of the northwest quarter, and the northwest quarter of the southwest quarter of section twenty-eight; the northeast quarter of the southeast

^{*} In pencil in original.

quarter, and the southeast quarter of the southwest quarter of section twenty-nine; the southwest quarter of the southwest quarter of section 30; the northwest quarter of the northwest quarter, the east half of the northwest quarter, the southwest quarter of the northeast quarter of section the northeast quarter of section thirty-one; the south half of section thirty-two; the southwest quarter of the southwest quarter of section thirty-three, and the northeast quarter of the northeast, the west half of the northeast quarter, the southwest quarter, the southwest quarter, the southwest quarter, the southwest quarter of the southwest quarter of section thirty-six, containing in all one thousand five hundred and

Township 36 N, R 3 west.

sixty-seven acres and seventy-three hundredths of an acre.

The east half of the northwest quarter, and the east fractional half of section one; the lots numbered one and two, and the southwest quarter of the northwest quarter of section three; the northwest quarter of the northeast quarter, the south half of the northeast quarter. the east half of the northwest quarter, the north half of the southwest quarter, the northwest quarter of the southeast quarter, and the lots numbered one, two, three, four and five of section four; the loss numbered one and two, and the west half of the northeast quarter of section eight; the whole of fractional section nine; the east half of the southeast quarter, and the southwest quarter of the southeast quarter of section eleven; the northeast quarter of the northeast quarter, the west half of the northeast quarter, the south half of the northwest quarter, and the northwest quarter of the southwest quarter of section twelve; the lots numbered three, four and five of section fourteen; the lots numbered three and four of section seventeen: the west half of the northwest quarter, the southeast quarter of the northwest quarter, and the southwest fractional quarter of section eighteen; the west half of the northwest quarter, the northeast quarter of the northwest quarter, the northwest quarter of the northeast quarter, the southeast quarter of the northeast quarter. the southeast quarter, the southeast quarter of the southwest quarter, the west half of the southwest quarter of section nineteen; the northwest quarter, the lots numbered one, two and three. the north half of the southwest quarter, the southwest

quarter of the southwest quarter of section twenty; the lots numbered three, four and five, and the northwest quarter of the northwest quarter of section twenty-nine; the whole of fractional section thirty; the lots numbered one, two, four, five and six, and the northwest quarter of the northwest quarter of section thirty-one, and the whole of fractional section thirty-two, containing in all three thousand five hundred and eighty-six acres and eighty-one hundredths of an acre, according to the official plats of survey of the said lands returned to the General Land Office by surveyor general, and for which the governor of the said State or Michigan has requested a patent to be issued to the said State as required in the aforesaid act.

Now, therefore, know ye, that the United States of America, in consideration of the premises, and in conformity with the act of Congress aforesaid, have given and granted, and by these presents do give and grant, unto the said State of Michigan, in fee-simple, subject to the disposal of the legislature thereof, the tracts of land above described.

To have and to hold the same, together with all the rights, privileges, immunities and appurtenances thereto belonging, unto the said State of Michigan, in fee-simple, and to its assigns forever.

In testimony whereof, I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twelith day of August, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundred and first.

By the President:

U. S. GRANT,
By D. D. CONE, Secretary.
S. W. CLARK,
Recorder of the General Land Office.

(Recorded in vol. 2, pages 442-443 inclusive.)

258 After like offer, objection, ruling, and exception, defendant's counsel read

Ехнівіт 136.

STATE OF MICHIGAN, STATE LAND OFFICE, LANSING, Ap'l 30th, 1874.

Hon. Willis Drummond, Com'r General Land Office, Washington, D. C.

Six: I have the honor to transmit for your examination the annexed list of lands, all of which are contained in supplemental list No. 3, of swamp or overflowed land, situate in the Grand River land district, Michigan meridian, in townships resurveyed. Said entitled list was intended to supersede or be in place of lists made prior thereto of the townships contained therein. The several descriptions submitted for examination have not been approved or patented to the State. We therefore respectfully ask that an approval of each parcel, so far as possible, be made with a view of patenting, and that in cases where portions thereof have been conveyed by the U. S. to other parties, that cancellations be made, or that the State be permitted to receive indemnity therefor.

Very respectfully, your obedient serv't,

L. A. CLAPP, Com'r State Land Office. List inclosed in the letter was as follows:

(Original.)

Supplemental List No. 3.

List of swamp or overflowed lands prepared under the act of Congress, approved Sept. 28, 1850, and in accordance with the instructions from the Commissioner of the General Land office, situate in Grand River land district, in the State of Michigan, in townships resurveyed and platted to May 1, 1858, this list being intended to supersede or be in place of lists of swamp lands heretofore made of townships contained in it.

The parcels described within comprise only a portion of the above-entitled list, and are such as have not been approved or patented to the State.

				Area.	
Subdivision.	Section.	Town.	Range.	Acres. 100ths.	Remarks.
NElof NW1	1	18 N	3 W	40	App'd to the State for R. R. pur-
SE! " NW!	1			39.62	poses Dec. 10, '59,
NEI "NWI	6			39,95	Vacant.
E 1 " N W 1	14			80	App'd to canal Jan'y 24, '55.
SEL "SEL	19			40	
S W] " S W]	28			40	44
SW "SE	28			40	Not selected.
SWI"NE	29			40	44
NI "SWI	29			80	App'd to State June 18, '59, R. R.
S W] "S W]	29			40	16
S W "S W	34			40	Vacant.
N W "S W	19	19 N	3 W	51.29	Certified to R. R.
SWI"SWI	19	6.6	4.6	50.70	46 49
8 4 " 8 W 1	20	4.6	4 E	80	69 64
NE "NW	32	4.6	4.6	40	Vacant.
S W] "S W]	33	6.6	6.6	40	Not vacant.
E 4 " N W 1	25	20 "	3 4	80	Vacant,
8 W 1 " N W 1	25	6.6	6.5	40	44
S W "	25	4.0	6.6	160	NARE of SWR. R. SW of SW.
N & "S E 1	25	6.6	6.6	80	Vacant. See Feb. 9, '70
81 "XW1	33	6.6	6.6	80	**
SWI"SWI	35	6.6	4.6	40	xi
NEI "NWI	1	IS "	+ "	38.42	Not selected.
8 ½ " N W	1	4.4	6.6	80	14
N 3 "S W 1	1	6.6	6.6	80	**
SEL "SW	1	6.6	4.4	40	
S W " N E	2	6.4	6.4	40	**
NEI "NWI	2	6 6	6.6	37.11	44
SE! "SW!	11	4.6	4.4	40	4.0
NET "NWI	12	4.6	6.6	-10	
S 1 " N W 1	12	6.6	8.6	80	**
S W of	12	6.6	4.4	160	**
260 84 "SW1	28	18 N	4 W	80	Not selected.
S 1 "S E 1	28	4.4	4.6	80	
N b of N E 1	20	+ 4	6.6	80	A.
NE "SW	1	20 **	+ "	40	44
SW "SW	4	20 **	4 .4	40	14
N W 1 " N W 1	.5	6.0	4.6	34.25	6-

			Area		
Subdivision.	ď	2,			
Subdivision.	Town.	Ramge.	Acres. 100ths.		Remarks.
WINEL				**	
	4 44	4 44	40	Not selected	
SE "NW		4.6	40	44	
		6 4	80	44	
$\begin{array}{cccccccccccccccccccccccccccccccccccc$		64	40		
SWI"SEL		6.6	80	8.6	
81 "YW! 15	4.6	6.6	40 80	+4	
swi "	4.6	4.6	160	**	
SE ("		4.6	160	4+	
8 ½ "S W ↓		66	80	**	
$ \begin{array}{cccccccccccccccccccccccccccccccccccc$	64	6.6	80	6-6	
NW " S E		6.6	80	+4	
NEI "NWI 9		5 "	20.95	**	
8 1 " N W 1		* * *	39,25 78,45	41	
NW "S E 5	19 **	6.6	40	6.	
SE SE SE	6.6	6.6	40	ás	
	6.6	6.6	40	4×	
M. S. C. D. Le	44	* 6	80		
8 W " S W	4.	5.6	40	**	
NE "SW	64	6.6	40	**	
SW "SE	6.6	4.4	40	**	
S W " N W	4.6	6.5	40		
N "S W "	6 a	4.4	80	**	
5 11 1 5 11 1	6.5	6.6	40	**	
10 2 12 4	20	6.6	80	4.6	
SW "SW	4.6	6.0	40	**	
N ½ " N W 1	44	6.0	80	**	
NW " N E 28	+4	6.6	80 40	41	
NE " N W 28	6.4	4.6	40	50	
5 W 5 E 34	6.4	4.4	40	14	
8 ½ of N W ½	6.4	**	80	4.6	
261 N 1 of S W 1	20 N	5 W.	80	Not selected,	
SW of NW 5	19 "		80	44-	
	19	6	40 80	**	
SE WNW	6 0		40	14	
E 4 "S W 1 "	4.6	4 +	69,96	1.0	
Lot No. 1.	8.4	**	39.77	**	
N W of S E	6.6	4.6	40	**	
11 12	**	6.0	40	**	
NE "NE	4.6	4.6	40	**	
N E	4.6	8.6	40 160	**	
N 1 "SE 1	6.4	4.6	80.96	**	
SE! "SE!	+ +	6.6	40.04	44	
$NW \mid \text{``} N \to 1$ 33	6.6	6.5	40	**	
	44	0.4	80	**	
N 12 1 13 13 13 13 13 13 13 13 13 13 13 13 1	20	6."	40	5.6	
S L "S E	6.	0.6	40	**	
Lot No. 5 4	6.0	4.	80	*	
Lot " 7 5	4.5	n 4	40	14	
Lot " 8	+ 4	4.4	40	84	
Lot " 3 5	6.6	4.6	39.87		

				Area.	
Subdivision.	Section.	n.	BC.	P. S.	Remarks.
	3	Town.	Range.	Acres. 100ths.	THE THE PARTY OF T
S E of N E S W " N E	5	$20\mathrm{N}$	6.W	40 40	Not selected.
NEI "NWI	16	6.0	**	40	44
84 "NW		**	**	80	**
8 ! "SE	V	**		80	**
E 1 " N E 1	9	**	14	80	46
SW "SE	4.4	4.4		160 40	**
	10	4.4	6.6	40	.,
NW "NW	6.6	6.4	6.6	40	14
NE "NE	17	44	44	40	44
E ½ " N E	20	44	44	80	44
W ↓ "SW E ↓ "N E SW "SW	21	**	**	80	***
E { "N E {		19	7	80	**
SW "SW	4 7	139	4	40 40	**
NW W SW	6.6	64	6.6	32.54	
N W "S W N E of N W	9	4.6	6.6	40	41
262 E l of N E 1	29	19 N	7 W	80	Not selected.
N W " N E	24.)	**	44	40	**
E 4 of S E 1	64	44	46	80	44
8 W " Z W	34	20 "	7 "	40	54
S W " X E	15	20 "	44	40 80	6.
E' "SE	26	4.6	6.6	S0 S0	**
	28	4.6	6.6	40	"
E4 "NW	31	44	4.4	80	**
S W 1 " N W 1	6.6	41		32.70	"
NET "SWI	66	44	66	40	**
A III C III Lancerences	33	24		33.50	55
			**	40 40	**
SWI"SWI				40	**
	11	15 "	12 "	40	
W. J. " YE!	14	44	11	80	**
	20	"		40	**
SWI "NWI	7	15	13.4	37.51	**
NW "SW		44	44	37.04	41
E d of N W h		**	**	40 80	**
NWI "SWI		24		40	
8 W " N W 1	66	44	**	40	66
SEI "NWI	8	16 "	4.6	40	u.
NW "SW			4.4	40	4
	11	44	44	47.16	46
	14		4.6	80 160	**
E ½ " N W }	**		14	80	44
S W] "		* *		132.80	**
N 1 "S E 1	**	46	4.6	90	**
SE "NE	22	44		40	**
SWI "SEL	**	64	**	40	**
SW "XW	26		**	40	**
	27	**		40 80	**
The State of the s	6	14 **	14 **	80	. 6
	10	64	4.6	40	**
W ½ of N E }		64	4.6	80	ii

Small type under " Remarks" in pencil in original.

Subdivision.	Section.	Township.	Range.	Area.	Remarks.
263 W ½ of S E \	- 11	14 N	14 W	80	Not selected.
NEI "NWI	14	4.6	14	40	44
SEL Of NEL	•)	15 "	6.6	40	41
NEI "NEI	6	6.6	4.4	39.37	14
Lot No. 1	7	6 .	+ 6	55,84	44
Lot " 4		6.6	6.6	34.10	Lot 4, plat 1839. Pat.
W d of S E	11	3.5	6.6	80	4 6
SE " N W	26	4.5	6.6	40	**
V # 1 8 E 1	6.6	6.6	5.6	40	9.6
8 ! " S W	34	6.6	4.4	80	44
Lot No. 2	6.6	4.6	6.6	27.92	4.6
N E of S E	35	6.0	4.6	40	**
NE " N W	25	16 "	4.6	40	+4
E ! " N W }	27	6.6	4.6	80	14
E 2 . S W	6.6	6.5	6 a	80	4.6
SW of NE	27	16 N	14 W	40	**
SE1 "	27	4.4	5.6	160	44
SW 1 " NE 1	36	6.6	9 a	40	44
NE "SE	6.6	4.4	4.6	40	44

Small type under "Remarks" in pencil in original.

After like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 137.

K. DEPARTMENT OF THE INTERIOR, R. D. GENERAL LAND OFFICE, E. K. Washington, D. C., June 15, 1874.

L. A. Clapp, Esqr., comm'r State land office, Mich., Lansing, Mich.

Sir: Your letters of the 30th April last, transmitting supplemental lists of swamp lands, embracing resurveyed townships, for the Cheboygan and Grand River districts, and requesting that the lands therein described be approved to the State of Michigan, with a view to patenting the same; also that in case any of the tracts

embraced in said lists have been conveyed by the United States to other parties, that said conveyance be canceled, or that the State receive indemnity for the same, are received.

In reply I have to state that, prior to the reception of the selections made under the new surveys in the following townships, viz:

Townships 34, 35, 36, 37 & 38 N, R 1 E. 28, 29, 34, 35, 36, 37 & 38 2 " 34, 35 & 36 N, R 3 E. 31, 32, 33, 34, 35 & 36 " 4 " 66 31, 32, 33, 34 & 35 5 " 31, 33 & 34 44 6 " 31, 33 & 34 8 " 34 31 & 32 9 " 25 - 331

Townships 29, 35, 36 & 37 & 38 N, R 1 W. 29, 30, 35 & 36 & 37 " .4 4 " 18 & 20 66 18, 19 & 20 66 6 " 19 & 20 44 19 & 20 15 44 12 " 15 & 16 6.5 13 " 4.6 14, 15 & 16 14 4

part of the selections made under the old or defective surveys had

been approved to the State.

In such cases this office has always refused to admit new selections in the same townships where the first or old selections had been certified to the State.

Our records show the following disposition of the tracts enumerated below, viz:

Parts of sections. Sec. Tp. Range. Remarks. E 1 of N W 1 32 N W 1 32 Lot No. 4... 28 38 N 1 W Indemnity awarded case No. 90, 66 Loc. wt. 2,200 June 17, 1851. . 6 " prior to swamp grant. 265 S É | of N É | 33 1 W Loc. wt. 73,057 June 17, 1851. 38 N Indemnity awarded case No. 93. 18 :3 Approved to the State for railroad purposes Dec. 10/59. " N W | 14 6. E. ! Approved to the State for canal Jan'y 24 55. SE | "SE | 19 Approved to the State for canal Jan'y 24 55. S W | "S W | 28 Approved to the State for canal Jan'v 24 55. Approved to the State for railroad purposes June 18 59, S W | of S W | 29 Approved to the State for canal Jan'v 24 / 55. Wil " S W 1..... 19 19 Approved to the State for railroad purposes June 18/59. 8 1 " S W | 29 Approved to the State for railroad purposes June 18 59. NA " S W] 25 20 Approved to the State for railroad purposes June 18 | 59. " S W | 25 66 Approved to the State for railroad purposes June 18/59. S W | " S W | 25 Selected by J. L. & Sag. R. road Feb'y 3, 1870. Approved Ap'l 15 | 76, to the State. List N W | " N E | 1 26) Certified to A. L. T. B. railroad Ap'l 17, 1861. S W | " N E | 1 App'd to the State for railroad purposes Apl 17, 1861. Patented to J. L. & Sag. railroad N W 1..... 1 May 8, 1873. 21 Loc. wt. 54,082, May 16, 1854. Indemnity awarded case No. 36. 25 6 . 37. 20.00 38.

Parts of sections.	Sec.	Tp.	Rang	e. Remarks.
SW " S E	22	25	7 W	Indemnity awarded case No. 39.
VW WW	23	p-6	4.6	" 40.
NE " NE	27	6.6	6.6	442.
SE " NE	27	**	6.6	Selected by G. R. & I. railroad July 14, 1870.
266 W ½ of N E ¼	27	25 N	7 W	Selected by G. R. & I. railroad July 14, 1870. Approved to the State April 13 76. List No.
N W of S W	27		6.6	Selected by G. R. & I. railroad July
SE "SW	27	44	**	14, 1870. Selected by G. R. & I. railroad July
NE of S W	.,-	05	4.6	14, 1870.
W "SW	97	25	66	Indemnity awarded case No. 43.
W SW	1	31	4.4	NO. 44.
				Certified to G. R. & I. R. road June 10/64.
ots 2, 3, 5 & 6		6.6	6.6	64 66 66 68
W of 8 E	21	4.4	44	** ** ** **
XE " N W	27		* *	44 44 44 44
" S W	5	32	4.4	66 66 66
W "SEL	ā	6.6	6.6	66 66 66
11. 1. 1. 11.	19	6.6	4.6	46 66 66 46
El "NWI	3	23	9	Selected by G. R. & I. railroad July 14, 1870.
E { " N E }	9	24	* 4	Approved to State April 13 76. List No. 24. App'd to the State for canal, Jan'y 24, 1855.
E " S W	12	24 N	9 W	Indemnity awarded case No. 52.
(E) "SE{	13	44	4.6	Certified to G. R. & I. railroad June 10, 1864.
E " N E	14	6.5	6.6	Indemnity awarded case No. 53.
ots 5, 6 & 7	11	29	6.6	Indian reservation.
	14	6.0	4.6	ii ii iii
E 1 of S E 1	20	44	5.4	Sold Oct. 29, 1853, etf. No. 9689.
" S W !	-3	30	6.6	Indemnity awarded over No. 51
E	11	9.6	6.6	Indemnity awarded case No. 54.
E "SW	11	**	**	Selected by G. R. & I. railroad July 14, 1870.
ot No. 1	8	32	10	Sold prior to swamp grant.
ots 2 & 3	8	4.6	4.4	Indemnity list No. 1.
W of N E	3-3	**	11	44 44 44
E 1 8 III	•)•)	42	* 6	** ** **
" SE 1	90)	**	K t	44 44 44
E " S W).)	4.6	4 +	Sold prior to swamp grant.
E 1 " S E 1	1).)	*4	**	is a prior to enamp grant.
EI "SE	27	K		** ** **
E ! " N E !	2.1	+ 4	4.4	

Small type under "Remarks" in pencil in original.

The following tracts are noted on our records as vacant.

They will be embraced in a list at an early day, and submitted to the Hon. Secretary of the Interior for its approval:

Parts of section.	Sec.	Tp.	Range.	Remarks.
NE of NW	6	18 N	3 W	Vacant
SWI"SWI	34	**	11	**
W 1 " S E 1	36	28	6.6	11
NEI "NWI	32	19	66	6.4
SWI"SWI	33	4.4	4.6	**
SWI" NWI	25	20	6.6	44
E 1 "NWI	25	20	6.6	" S E, N W, pat'd.
N I " S E I	25	6.6	**	**
84 "NW 1	33	4.6	4.6	44 Apolied for approval Aug. 12, 1875,
SWI"SWI	35	6.4	9.6	" See letter book.
Whole of	2	23	5	Clapp.
NE l of S W l	36	21	7	s.
E4. "SE1	30	24	8	44
W 4 V W	1	6.6	9	**
NEI SWI	12	4.6	6.6	44
SEI" NE	14	**	44	14.
NWI"SWI	8	39	10	44
SWI" SEI	-343			Y These three tracts do
	28	18		Not selected :
SW 1" NE L	1363	**	*.6	not appear on our
N ½ " S E 1	1	20	4.6	" records as swamp- land selections.

Small type under "Remarks" in pencil in original.

Very respectfully, your ob't s'v't,

S. S. BURDETT, Commissioner.

After like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 138.

STATE LAND OFFICE, LANSING, August 12th, 1875.

Hon. S. S. Burdett, Com'r Gen. Land Office, Washington, D. C.:

Referring to your letter under date of June 15, 1874 (initial K.), it appears that the lands embraced in the annexed list were noted on your records as vacant, and would be embraced in a list at an early day and submitted to the Hon. Secretary of the Interior for his approval to the State of Mich., as swamp or overflowed land enuring to the State under act approved May 28, 1850.

We respectfully request that the lands be embraced in a list and submitted for approval without further delay, if consistent with your views.

Very resp'ly yours,

L. A. CLAPP, Commissioner.

List enclosed is as follows:

	Section.	Town.	Range.	Area. Acres. 100ths.	Remarks.
NE of NW SW of SW	$\frac{6}{34}$	18 N	3 W	·····	Vacant.
W of S E	36	28 N	66	• • • • • • •	*6
N E 1 of N W 1	32	19 "	66		44
S W ‡ " S W ‡ S W ‡ " N W ‡	33	00	"		+6
$\mathbf{E}_{\frac{1}{2}}$ " \mathbf{N} \mathbf{W} $\frac{4}{4}$	$\begin{array}{c} 25 \\ 25 \end{array}$	20	46		44
$N_{\frac{1}{2}}$ " $S E \downarrow \dots$	25	44	44	• • • • • • • •	44
S 1 " N W 1	33	64	44		46
S W 1 " S W 1		30	**		14
NE ‡ "SW ‡	$\frac{2}{36}$	$\frac{23}{21}$	5 N		**
$\mathbf{E}_{\frac{1}{2}}$ " $\mathbf{S} \mathbf{E}_{\frac{1}{4}}$	30	24	8		44
W 1 " N W 1	1	24	9 "		44
N E ‡ " S W ‡	12	24	64		46
\tilde{N} \tilde{W} \tilde{I} " \tilde{S} \tilde{W} \tilde{I}	14	32	10 "		**
4	0	0 -	10		6.6

After like offer, objection, ruling and exception, defendant's counsel read

K.

Ехнівіт 139.

H. A. W.

DEPARTMENT OF THE INTERIOR, E. K. GENERAL LAND OFFICE, WASHINGTON, D. C., Sept. 13, 1875.

L. A. Clapp, Esq., commissioner of State lands, Lansing, Mich.

SIR: I am in receipt of your letter of the 12th ult. requesting that certain swamp lands in the State of Michigan, be approved and patented to the State.

In reply I have to inform you that the following tracts, to wit:

				,	CI	int	
NE 4 of NW	‡ sec.	6	T	18	N	R	3
SW 1 of SW	# "	34					
NE of NW	7 1 44	32	44	19		44	0
SW i of SW	1 "	33	44	44		4.	.3
E 3 of NW	1 "	25				44	
N d of NA	14 "	25	66	20		44	
S of NW	7 1 "	33	+4	44		44	
SW 1 of SW	į "	35				44	

were embraced in list No. 20, of swamp and overflowed lands for the Ionia district, Mich., and the following tracts, to wit:

W 1 of SE 1	sec.	36	T	28 N	R	3 W	7
The whole	+6	2	68	23	44	5	
NE 1 of SW 1	44			21	66		
E of SE	66	30	6.6	24	46	8	
W of NW	ee-	1	66	24	66	9	
N E of S W	4.4			44	40	14	
NW 1 of SW	6.6	8	6.6	32	6.	10	

were embraced in list No. 21, of swamp and overflowed land for the Ionia, now Traverse City, district, Mich., which lists were on the 10th inst. submitted to the Secretary of the Interior for 270 his approval, preliminary to patenting the lands embraced therein to the State of Michigan under the swamp grant. Very respectfully, your ob't s'v't,

W. W. CURTIS, Acting Commissioner.

After like offer, objection, ruling, and exception, defendant's counsel read from a copy duly certified by the State land office of Michigan,

Ехнівіт 140.

No. 20.

Approved List No. 20, Ionia.

A list of swamp and overflowed lands selected as enuring to the State of Michigan under the provisions of the act of Congress approved September 28, 1850, in the district of lands subject to sale at Ionia, Michigan, viz:

	Sec.	Town.	Range.	Acres.	
NE 1 of NW 1	6 34	N. 18	W. 3	39.95 40.00	79.95

GENERAL LAND OFFICE, SWAMP-LAND DIVISION, September 10th, 1875.

This certifies that the foregoing tracts of land were duly reported to this office as swamp land, and that they have been carefully compared with the field-notes and plats of public surveys, and found therefrom to be swamp and overflowed lands.

G. HOSMER, Clerk.

E. KILLPATRICK.

Head of Swamp Division.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, Sept. 10th, 1875.

Respectfully submitted for approval.

W. W. CURTIS, Acting Commissioner.

271 DEPARTMENT OF THE INTERIOR, 13 Sept., 1875.

The foregoing list of swamp selections is hereby approved, subject to any valid legal rights that may exist to any of the tracts therein described.

> B. R. COWEN, Acting Secretary.

I, S. S. Burdett, Commissioner of the General Land Office, certify that the foregoing is a true copy of approved list No. 20, of swamp

and overflowed lands, selected as enuring to the State of Michigan, under the provisions of the act of Congress approved September 28, 1850, in the district of lands subject to sale at Ionia, Michigan.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the General Land Office to SEAL. be affixed, at the city of Washington, the 18th day of September, 1875.

S. S. BURDETT,

Commissioner.

After like offer, objection, ruling, and exception, defendant's counsel read from a duly certified copy from the State land office of Michigan,

Ехнівіт 141.

No. 34.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come, Greeting:

Whereas, by the act of Congress approved September 28, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the 'swamp lands' within their limits," it is provided that all the "swamp and overflowed lands" made unfit thereby for cultivation, within the State of Michigan, which remained unsold at the passage of said act, shall be granted to said State.

And whereas, in pursuance of instructions from the General Land Office of the United States, the several tracts or parcels of land hereinafter described have been selected as "swamp

and overflowed lands" inuring to the said State under the act aforesaid, situate in the district of lands subject to sale at Ionia, Michigan, to wit:

Township 18 N, R 3 west.

The northeast quarter of the northwest quarter of section six; and the southwest quarter of the southwest quarter of section 34, containing in all seventy-nine acres and ninety-five hundredths of an acre, according to the official plats of survey of said lands returned to the General Land Office by the surveyor general.

And for which the governor of the said State of Michigan has requested a patent to be issued to the said State, as required in the

aforesaid act.

Now, therefore, know ye, that the United States of America, in consideration of the premises, and in conformity with the act of Congress aforesaid, have given and granted, and by these presents do give and grant, unto the said State of Michigan, in fee-simple, subject to the disposal of the legislature thereof, the tracts of land above described. To have and to hold the same, together with all the rights, privileges, immunities and appurtenances thereto belonging unto the said State of Michigan, in fee-simple, and to its assigns forever.

In testimony whereof, I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

[SEAL.] Given under my hand, at the city of Washington, the thirty-first day of July, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundred and first.

By the President:

U. S. GRANT,
By D. D CONE, Secretary,
S. W. CLARK,
Recorder of the General Land Office.

(Recorded in vol. 2, page 440.)

After like offer, objection, ruling and exception, defendant's counsel read the following certificate as

Ехнівіт 142.

STATE OF MICHIGAN, STATE LAND OFFICE, LANSING, June 16, 1892.

I, George T. Shaffer, commissioner of the State land office, do hereby certify that the following lands, viz: The southeast quarter of southwest quarter, southwest quarter of southeast quarter, and east half of southeast quarter of section seven (7), town twenty-three (23) north, range one (1) west; southeast quarter of southeast quarter of section twenty-eight (28), town twenty-four (24) north, range one (1) west; southwest quarter of southwest quarter of section two (2), town twenty-seven (27) north, range four (4) west; north half of southwest quarter of section twenty-nine (29), town eighteen (18) north, range three (3) west; east half of southwest quarter of section one (1), town eighteen (18) north, range four (4) west, all in Michigan, are not included in any approved list made by the Secretary of the Interior to the State of Michigan, now on file in this office, and I further certify that the said lands are not included in any patent from the United States to the State of Michigan, as received and now on file and of record in this office.

I further certify that no swamp lands in township eighteen (18) north, range three (3) west, under act of Congress approved September 28, 1850, are included in any approved lists on file in this office, except approved list No. 1, Ionia, approved list No. 10, Ionia, and approved list No. 20, Ionia, nor in any patent except patents Nos. 20 and 34, Ionia district. That no swamp lands in township eight-

een (18) north, range four (4) west, under act of Congress approved September 28, 1850, are included in approved lists on file in this office, except approved list No. 1, Ionia, nor in any patent except patent No. 2, Ionia.

That no swamp lands in township twenty-seven (27) north, range four (4) west, under act of Congress approved September 28, 1850, are included in any approved lists on file in this office, except ap-

proved list No. 4, Ionia, nor in any patents except patent No. 16, Grand Traverse. That no swamp lands in townships twenty-three (23) and twenty-four (24) north, range one (1) west, under the act of Congress approved September 28, 1850, are included in any approved lists on file in this office except approved list No. 1, Genesee, nor in any patent except patent No. 2, Genesee district.

In testimony whereof, I have hereunto subscribed my name, and

have caused the seal of this office to be affixed.

[SEAL.] Done at the city of Lansing on the day and year above written.

GEO. T. SHAFFER, Commissioner of the State Land Office.

After like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 143.

United States Land Office, Detroit, Sept. 10th, 1877.

Hon. B. F. Partridge, commissioner of State land office.

DEAR SIR: Enclosed we transmit a copy of a letter received this morning from the Commissioner of the General Land Office, Washington, D. C., which will explain itself. You will take notice that you have sixty days from receipt of this notice to appeal from the decision of the department, herein transmitted to you. At the termination of the sixty days we shall report the case to Washington, as directed.

Very respectfully, J. B. BLOSS, Register. JOHN M. FARLAND, Receiver.

275 Enclosed was the following:

Refer in reply to this initial.

K. Department of the Interior, H. W. B. General Land Office, E. K. Washington, D. C., September 6, 1877.

Register & receiver, Detroit, Michigan.

GENTLEMEN: The tracts below described, included in homestead entries in your district, and found to be in conflict with an apparent claim of the State of Michigan, under the swamp grant, to wit:

S E $\frac{1}{4}$ S W $\frac{1}{4}$ sec. 6, and N W fr'l	1 7-35 N	V 4 E	Hd.	1756 1368
NW 4 NE 4, and NE 4 NW 4	29 "	44		
SIVELOUINER	-			1754
S 1 N E 1, and N E 1 S E 1	19 34 N		Hd.	1761
S 1 N W 1	19 "	64		1284
WISWIandersow	-			1294
W 1 S W 1, and S E 1 S W 1	19 "	6.6		1273
NE 4 S W 4, and N W 4 S E 4	10 0	4.		
The to the find to the to be	19 "	4.4		1285
NW 4 of SE 4	22 "	66		
CELVIV				1738
5 E 1 7 W 1	33 4	4 a		
90 991	1313			1281
20-001				
$\begin{array}{cccccccccccccccccccccccccccccccccccc$	33 "			$\frac{1738}{1287}$

These lands are embraced in supplemental list D of swamp selections, which was made and transmitted to the office after the townships in which they are situated were resurveyed, and in reference to which a letter dated June 18, 1864, was transmitted to your office, and which contains the following: "After the resurveys were made, new selections of swamp lands were also made and transmitted to this office; but before these new selections were received, the office had approved and patented to the State most of the selections for the same townships under the old surveys.

"The supplemental list D, to which you refer, was made from the resurvey, and was originally intended to abrogate or supersede the old list in the townships contained in said supplemental list

D, but inasmuch as the selections under the old surveys in that portion of the Detroit district, had been acted upon and carried into patent, that course was found to be impracticable.

"As this office cannot recognize two lists of swamp selections for the same township, made from different and conflicting surveys, and having, as stated, acted upon one, we must of necessity ignore the other. You will therefore consider the original list made under the old survey, a copy in part of which was sent you on the 15th April last, as being the only list to govern you in the townships therein contained."

In view of the foregoing action of this office the claim of the State under the swamp grant to the lands in question is held for

rejection subject to appeal.

You will please notify the State authorities and all others in interest of the action of this office in the premises, and allow sixty days from the receipt of notice in which to file appeals, and at the expiration of that time report whether or not appeal has been taken, and withhold the lands from all further disposition until otherwise instructed by this office.

Very respectfully, (Signed)

J. A. WILLIAMSON, Commissioner.

After like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 144.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, Washington, D. C., June 26, 1880.

His excellency the governor of Michigan, Lansing, Mich.

SIR: I have the honor to acknowledge the receipt of your letter of 17th inst. inclosing list of lands in township 24 north of range 1 west, Michigan, claimed by the commissioner of the State

land office as belonging to the State of Michigan under the swamp grant, reported by the surveyor general in list of lands in Saginaw district under date of December 24, 1852.

I have to state that the list referred to was superseded by a list reported from resurveys made in 1853, and certified to this office Oct. 12, 1853, as to townships 13-14-15-16-17-22-23-24-25-26 & 27 of range 1 west and townships 11-12-13-22-23-24-25-26 & 27 of range 2 west, and the lands described in the list sent by you are not included in the list made from the resurveys, consequently are not recognized as swamp selections, and the State of Michigan has no right thereto under and by virtue of said superseded list.

The land in the odd-numbered sections has all been certified to

the State for railroad purposes.

Very respectfully,

J. A. WILLIAMSON,

Commissioner.

And after like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 145.

EXECUTIVE OFFICE, MICHIGAN, LANSING, July 27, 1881.

Hon. Samuel J. Kirkwood, See'y of the Interior, Washington, D. C.

SIR: The lands described in the enclosed list marked "A," have been approved to the State of Michigan under the act of Congress approved Sept. 28, 1850, for the disposal of swamp land; I have the honor to request that patent for the same be issued to this State.

Respectfully yours,

DAVID H. JEROME, Governor.

278 Enclosed was the following:

				Area.			
Subdivisions.	Sections.	Town.	Range.	Acres. 100ths.	Remarks.		ss.
Suspended.		N.	W.				
23 S W 4 of N E 4	29	18	3	40	App'd Oct.	27, '73, ca	ne'd, vac.
" SE of SW	17	19	3	40	16.	do.	do.
27 SE	25	28	*3	160	$\mathbf{D}\alpha_{*}$	do.	do.
See if in Lot 2		4 4	4.6	31.15	S 2. Do. Pat'd to Jac Saginaw I	k son, La	unsing &
30 NE of NE	22	30	59	40			May 28, 73.
26 Lot 1	24	:365	2	51.57	2.74.	. 0	
	6.9	4.6	0.4	45.62	27.80.		
	4.6	4 6	4.6	25.35	1		
" 4	4.6	+ 6	+4	38,31	as in se Pat'd sw'p,		4
N 1 of S W 1	64	4.6	4 4	80	See to gov.		1
NW of SE	44		4.4	40	July 2, 78.	er erich.	

Land patented as sec. 34 relinquished by gov. July 31, '78.

After like offer, objection, ruling, and exception, defendant's counsel read

Ехнівіт 146.

Refer in reply to this initial

K. DEPARTMENT OF THE INTERIOR, H. W. B. GENERAL LAND OFFICE, S. L. C. WASHINGTON, D. C., Aug. 27, 1881.

His excellency the governor of Michigan, Lansing, Michigan.

SIR: Your letter of the 27th ultimo is received, inclosing a list of lands which you state have been approved to the State of Michigan as swamp, and asking that patent be issued for the same.

In reply I have to state that it appears from the records of this office that the following tracts, embraced in said list, were selected and reported as swamp lands March 29, 1852, and approved

279 as such Oct. 27, 1853, but have not been patented to the State, for the reason that the surveys under which they were selected being found to be defective, a resurvey of the townships was made, and a new list of swamp-land selections was reported thereunder, superseding the former list, in which said lands do not appear; they are, therefore, not recognized as swamp selections, and cannot be treated as such, to wit:

S W 4 N E 4 29, 18 N, 3 W; S E 4 S W 4 17, 19 N, 3 W.;

Lot No. 2, and S. E \ 25, 28 N, 3 W.

The N E 4 N E 4 22, 30 N, 9 W—also included in your list, was reported to this office Feb'y 20, 1857, as swamp land, and patented to the State Dec. 26, 1866. By letter of Nov. 22, 1872, the governor of Michigan was advised that said tract had been erroneously carried into patent; the same having been sold June 7, 1856; that said sale was confirmed by act of Congress approved March 3, 1857, and requested to cause a relinquishment of the apparent title of the State to the land, to be executed and forwarded to this office. This request was complied with May 28th, 1873, and the entry was patented Feb'y 15, 1875.

The remaining tracts: Lots 1, 2, 3, and 4; N ½ S W ¼ and N W ¼ S E ¼ 24, 36 N, 2 W, will be patented to the State at an early

day.

Yours respectfully, your obedient servant,

N. C. McFARLAND, Commissioner. And after like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 147.

EXECUTIVE OFFICE, MICHIGAN, SAGINAW, March 20th, 1882.

Commissioner General Land Office, Interior Department, Washington, D. C.

Sir: I inclose herewith communication from Hou. J. M. Neasmith, commissioner of State land office, together with list of lands selected for the State, for which I respectfully ask patents to be issued. Very respectfully yours,

DAVID H. JEROME,

Gov. of Michigan.

Inclosed was the following:

STATE OF MICHIGAN, STATE LAND OFFICE, LANSING, March 18, 1882.

To the governor:

I herewith enclose a list of swamp land selected for the State under the act of September 28, 1850, granting swamp and overflowed lands to the State of Michigan, and respectfully ask that you request the Secretary of the Interior to cause patents for the same to be issued to the State.

Very resp'y yours,

J. M. NEASMITH, Com.

281				Area.	
Subdivision.	Section	Town.	Range.	Acres. 100ths.	Remarks.
Lot 1	17	47 N	1 W	32,65	Sold 1848.
N W	25	9 44	15 E	160.00	No such tract.
N E 1	25	9 "	2 W	160.00	pt of Such tract,
N E N W of S E	14	16 "	13	40,00	61 11
E & of N W	9	20 "	2 "	80.00	Appd. & R. & R. April 2, '64. Patented Nov. 12, '69.
Elof S W	9	20 "	2	80,00	Jackson, Lansing & Saginaw.
WiofSE	9	20 "	4	40,00	Not selected.
W tof S W !	19	24 "	5 "	40.00	46 64
1 1	7	28 "	4 "	320.00	66 64
W t of N W	7	20 44	4 44	40.00	
S of S W L	7	- 10) 6.	4 "	80.00	
E 4 of N W 1	19	29	4 "	40,00	
of SW L	19	29 "	4 "	80,00	
E of NW!	31	29 **	4	40.00	
V & of N E \	31	35 "	4	80.00	List 11.
of S W	31	35 "	4 16	80.00	Appd. as swamp, Jan. 9, "66,
W l of S E]	31	35 **	4	80.00	66 68 60 60 80
		00	•	00.00	Addn. land

And after like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 148.

Refer in reply to this initial "K."

S. L. C.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, WASHINGTON, D. C., March 29, 1882.

His excellency the governor of Michigan, Lansing, Mich.

SIR: I am in receipt of your letter of the 20th inst., enclosing a letter from the commissioner of State lands, accompanied by a list of lands claimed as swamp, and requesting that patent issue for the same.

I have the honor to state that the following is the status of the

State's claim, as shown by the records of this office:

Lot 1, sec. 17, tp. 47, R 1 W, was selected by the State and reported to this office as swamp land Feb'y 1st, 1853, but having been entered by cash July 1st, 1848, did not pass to the

State under the grant of September 28th, 1850.

The E ½ N W ¼, and E ½ S W ¼ of sec. 9, tp. 20, R 2 W, were selected and reported to this office as swamp lands May 12th, 1858. Described tracts were also selected for the Jackson, Lansing and Saginaw railroad, and patent issued to the State for the same Nov. 12th, 1869. These lands having been patented to the State for railroad purposes, this office will not consider the State's claim to the same lands under another grant.

The N W 4 sec. 25, tp. 2, R 15 E, does not appear on the plats of

Government survey.

The following tracts have not been selected as swamp:

N E 1	Sec 25	Tp 9	R 2 W.
N W 1 N E 1	" 14	" 16	" 13 "
SW SE	" 9	" 20	" 4 "
$W_{\frac{1}{2}}NE_{\frac{1}{4}}$	" 31	" 35	" 4 "
E ½ S W ¼	" 31	" 35	" 4 "
W 1 S E 1	" 31	" 35	" 4 "

The following and remaining tracts described in your list were selected and reported to this office as swamp land in 1852, but subsequently the townships in which these lands are situated were resurveyed, on the ground that the original surveys were fraudulent, and new lists of swamp selections were made out which superseded the old, and which do not contain described tracts:

S W S W	Sec 19	Tp 24	R 5 W.
W 1	" 7	" 28	" 4 W.
N W 1 N W 1	" 7	" 29	" 4 "
E ½ S W ‡	" 7	" 29	" 4 "
S E \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	" 19	" 29	" 4 "
E ½ S W ¼	" 19	" 29	" 4 "
N E 4 N W 4	" 31	" 29	" 4 "

In view of the foregoing, and the fact that the lands above described have been disposed of by the Government, I am unable to comply with your request.

Very respectfully, your obedient servant,

N. C. McFARLAND,

Commissioner.

283 And after like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 149.

K.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, Washington, D. C., Mar. 25, 1887.

Address only the Commissioner of the General Land Office.

Register and receiver, Detroit, Mich.

Gentlemen: The following homestead entries are suspended for conflict with the apparent claim of the State of Michigan, under the swamp grant of Sept. 28, 1850, to wit:

No. 2379, made Aug. 11, 1884, for E $\frac{1}{2}$ N W $\frac{1}{4}$ and N W $\frac{1}{4}$ N W $\frac{1}{4}$ sec. 18, and W fr l $\frac{1}{2}$ S W $\frac{1}{4}$ sec. 7, T $\frac{3}{2}$ N, R 4 E, by Hermann Lietzon, as to the W $\frac{1}{2}$ S W $\frac{1}{4}$ sec. 7.

No. 2215, made June 11, 1881, for N $\frac{1}{2}$ S W $\frac{1}{4}$ sec. 14, T 35 N, R 4 E, by William Meden.

No. 1626, made Feb'y 29, 1876, F. C. No. 833, issued Oct. 10, 1881, for N E 4 S E 4 sec. 17, T 35 N, R 4 E, to Johan Globke.

No. 2401, made Feb'y 2d, 1885, for N E ‡ sec. 23, T 35 N, R 4 E, by Frank Ostrofski, as to the N E & N E 4.

No. 1683, made Sept. 23, 1876, for S $\frac{1}{2}$ S E $\frac{1}{4}$ sec. 19, and N $\frac{1}{2}$ N E sec. 30, T 34 N, R 5 E, F. C. No. 937, issued October 31, 1883, to John Schalk.

No. 1654, made July 6, 1876, for E ½ S W ¼ sec. 18, and N E ¼ N W ¼ and N W ¼ N E ¼ sec. 19, T 34 N, R 5 E, F. C. 940, issued to Frederick Natzke, as to S E ¼ S W ¼ sec. 18, and N E ¼ N W ¼ and N W 4 N E 4 sec. 19.

The lands in conflict are embraced in a supplemental list "D" of swamp-land selections, which was made and transmitted to this office subsequent to the resurvey of the townships in which they

lie, and in relation to which a letter from this office, dated June 18, 1864, was transmitted to your office, which contains

the following:

"After the resurveys were made, new selectious of swamp lands were also made and transmitted to this office, but before these new selections were received, the office had approved and patented to the State most of the selections, for the same townships, under the old

In this connection it may be well to state that the records of this office show that in T 35 N, R 4 E, 8,126.60 acres, and in T 34 N,

R 5 E, 11,194.43 acres were patented as above stated.

"The supplemental list 'D'" to which you refer was made from the resurveys, and was originally intended to abrogate or supersede the old list in the townships contained in said "supplemental list D," but inasmuch as the selections under the old surveys, in that portion of the Detroit district, had been acted upon and carried into patent, that course was found to be impracticable. As this office cannot recognize two lists of swamp-land selections for the same townships made from different and conflicting surveys, and having, as stated, acted upon one, we must of necessity ignore the other.

"You will therefore consider the *original list* made under the *old* surveys, a copy in part of which was sent you on 15th April last, as being the only list to govern you in the townships therein con-

tained."

In view of the action of this office heretofore had (as above), touching said "supplemental list D," you are advised, that the claim of the State thereunder, for the lands herein described as being in con-

flict, is this day held for rejection.

Advise the State authorities, and all other parties known to be in interest, in accordance with the foregoing, allowing the usual time under the rules of practice for appeal, and after the expiration of the time allowed, report whether or not whether an appeal has been taken.

Very respectfully.

WM. A. J. SPARKS, Commissioner.

And after like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 150.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, WASHINGTON, D. C., Nov. 8, 1887.

Register & receiver, East Saginaw, Mich.

Gentlemen: The N E 4 of the N W 4 of section 8, in township 23 north, of range 2 west, Michigan, which is embraced in cash entry No. 12481, made at your office July 12, 1881, in the name of Maria E. Ortman, appears to be claimed as swamp land by the State

of Michigan.

The only evidence in this office in support of said claim is a list of selections reported to this office Dec. 24, 1852. It was subsequently ascertained that the surveys from which said selections were made were erroneous, and a new survey was ordered by this office, and was made under the direction of the surveyor general for Michigan, in June, 1853, and a new list to be in lieu of the list of Dec. 24, 1852, was reported by him to this office October 12, 1853, in which new list the foregoing described tract is not embraced.

Said tract is not shown by the field-notes of survey to be swamp or overflowed land within the meaning of the grant, nor has it

been approved or patented to the State.

In view of the foregoing, the claim of the State of Michigan to said tract, under the swamp-land grant, is this day held for

rejection.

286

Notify the governor of Michigan of this action, and allow the usual time for appeal, and thereafter make full report to this office, with evidence of the service of such notice.

Very respectfully,

W. A. J. SPARKS.

Commissioner.

After like offer, objection, ruling and exception, defendant's counsel read

Ехнівіт 151.

Address only the Commissioner of the General Land Office.

DEPARTMENT OF THE INTERIOR. GENERAL LAND OFFICE, Washington, D. C., Jan'y 30th, 1868.

Register & receiver, Ionia, Mich.

GENTLEMEN: This office had under consideration the case of the entries and locations by Addison P. Brewer, Wellington R. Burt, Frederick Hall and Lannon B. Townsend, embracing some 13,453 acres in township- 18, 19 and 20 N of R 3 W, which was the subject of our letters to you of the 9th April and 24th July, 1867, and your oint report on the 5th August following.

These entries and locations are contested by the Flint and Pere Marquette, and the Jackson, Lansing and Saginaw (formerly Amboy, Lansing and Traverse Bay) Railroad Companies, and by Messrs. Royal C. Remick and Thomas Merrill. You report a hearing ad in the case, and forward the testimony adduced with your

pinion thereon.

It appears that the lands in question were brought into market n 1840. In 1852, they were selected by the State of Michigan as wamp, under the act of September 28th, 1850, and the selections egularly entered on the books and plats of the local office and the ecords of this office. In 1857, a resurvey of townships 18, 19 and 20 N of range 3 W was had, from which it appears that these lands vere not swamp, and, therefore, in 1858, the swamp selections were set aside, and others substituted from which these lands were mitted.

It appears from the testimony that Mr. Remick, in 1854, and Mr. lerrill, in 1863, applied to enter larger portions of the land in ques-These applications were then rejected at your office on the on. ground that it was State swamp land, and therefore not sub-87 ject to entry. In February, 1863, Wellington R. Burt and Thomas Snell were allowed to make locations of this land to he extent of some two thousand eight hundred acres, with military ounty land warrants, but the locations were cancelled by this office, er letters to the register and receiver, of the 15th April and the

6th June, 1863. 27 - 331

In 1866, the entries and locations now in contest were allowed. The act of June 3d, 1856, made a grant of land to Michigau for railroad purposes, embracing the odd-numbered sections within sixmile limits on each side of roads provided for in the act, with the right to select indemnity for such tracts thereon as were sold or otherwise disposed of from any unreserved lands of the United States, lying in alternate sections outside of the six and within fifteen mile limits.

The public lands liable to disposal within the limits indicated, were, on the 30th May, 1856, withdrawn from market for the adjustment of the grant. All the lands remaining undisposed of in place, in the odd-numbered sections of the six-mile limits were duly certified in the years 1859, 1862 and 1864, as falling within

the grant.

The State, having selected December 15th, 1858, to take indemnity for the tracts sold and otherwise disposed of therein from the odd-numbered sections in the fifteen-mile limits, all the lands in the latter sections then appearing on our books as vacant, and not reserved for any purpose, were selected and certified to the State, in the years 1859, 1862 and 1864, as indemnity, the quantity falling short of full indemnity some 75,000 acres.

The land in dispute in this case lies in the fifteen-mile limits, about six thousand four hundred acres thereof being in odd-numbered sections, which portion was not certified as indemnity in adjusting the grant, being covered on our books at the time of selection

by the swamp selections of 1852.

On the 11th April, 1859, this office restored to ordinary private entry, per the printed notice No. 631, such of the lands in the townships in question as were no longer required for

railroad purposes, and were subject to such entry at the date of withdrawal in 1856 as required by the Attorney General's opinion of July 14, 1837, and General Land Office circular dated January 1st, 1836. See 2 part Laws, Instructions and Opinions, pages 125 and 514. In this state of facts, the said railroad companies claim that portion of the land embraced in the entries and locations in question which lies in odd-numbered sections, on the ground that it falls within the railroad grant of 3d June, 1856, while Messrs. Remick and Merrill the tracts applied for them in 1854 and 1863 under their prior applications.

It is further contended on the part of the contestants that the land in question was legally in market at the date of said entries and locations, and therefore that they should be cancelled, and such portion of the land as may not be awarded to the contestants brought into market after public notice allowing free competition

in purchase

I am of opinion that the swamp selections made in 1852 had the effect to withdraw the lands in question from market, and they were not afterwards retored thereto when other selections were substituted in 1858, which restoration could only be effected after public notice of at least thirty days, according to the 9th section circular of 1st of January, 1836.

From 1852, when the original swamp selections were made, and up to the resurvey in 1857, the lands in question were regarded as swamp disposed of by grant to the State under the act of 1850, and being thus placed in a state of isolation from disposal prior to the railroad grant of 1856, and so continued until after the date of that grant, they are not regarded as within its purview. I am of the opinion, therefore, first, that they were not included in the lands canceled by the act of 1856 for railroad. When the railroad grant was adjusted, these lands were not claimed nor awarded to the grant in the final adjustment, and the claim now advanced on the part of the Commissioner is not recognized as valid by this office.

289 2nd. The claim of Messrs. Remick and Merrill based on their applications to enter in 1854 and 1863—invalid, as the land was not at the time in the market, and they could have ac-

quired no legal right thereto by such applications.

3rd. Then as regards the entries and locations in question, they are illegal because of the land being out of the market when they were allowed. It is therefore the decision of this office that said entries and locations be canceled, and the lands embraced therein

restored to market after the usual public notice.

The parties in interest have the right to appeal to the Hon. Secretary of the Interior; thirty days from the date of the service upon them of notice of this decision will be allowed them in which to appeal should they desire to do so, and you will serve such notice upon them, and report the date of service to this office.

At the expiration of the time allowed, should an appeal not be

taken, this decision will be carried into effect.

Very respectfully, your ob't serv't,

JOS. S. WILSON,

Commissioner.

And

Ехнівіт 151 А.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, July 30th, 1869.

Register & receiver, Ionia, Mich.

Gents: In the case of the entries of Messrs. Brewer, Burt. Hall & Townsend, in townships 18, 19 & 20 N, of range 3 W, which were the subject of a decision of this office adverse to their validity, rendered in a letter to you of the 30th Jan., 1868, and an appeal having been taken therefrom to the Hon. Secretary of the Interior, affirmed on the 14th July, 1868, by him:

I have to advise you that the parties interested having applied to have the entries confirmed by the board of equitable adjustment under the acts of Aug. 3, 1846, and 26th June, 1856, the Secretary of the Interior, by letter to this office of the 21st inst., finally declined to act for the confirmation thereof, and the entries have therefore been cancelled by this office in pursuance of he decision referred to.

The said entries were paid for in part with military bounty land warrants and serip issued under the agricultural and mechanic acts of July 2, 1862, and in part with cash, as follows, viz: 1st, military B. L. warrant under act of 1850, No. 99773 for 40 acres, and 23514 and 34089 for 80 acres, locations No. 6850, 6854 and 6855; and under the act of 1855, warrants No. 19398, 44658 & 48086 for 80 acres, and 28913, 35108, 47314, 47421; 63009, 72979, 77427, 90853. 95138, 96516 for 120 acres; and 79568, 84870, 85789, 87752, 103,786, 104,242, 104,363, 104,930, 105,017, 105,426, 105,463, 105,491, 105,516 for 160 acres, locations No. 3419, 3417, 3420, 3418, 3250, 3344, 3401, 3397, 3396, 3402, 3398, 3389, 3431, 3404, 3424, 3432, 3345, 3435, 3434, 3375, 3400, 3393, 3392, 3391, 3394 and 3433, and Ag'l C. scrip issued to Penn.; No. 1013, 1014, 1016 to 1027 inclusive, 1029 & 1033 issued to Ohio; No. 185, 186, 187, 603, 690, 691, 692, 1417, 1418, 1419. 1420, 1471 to 1480 inclusive, 1749, 1751, 1753, 1758 to 1765 inclusive, 1768, 1830, 1831 & 1832, locations No. 326, 327, 329 to 340 inclusive, 372, 373, 363, 364, 365, 367, 368, 369, 370, 374, 392, 375 to 386 inclusive, 540, 501, 503, 508 to 515 inclusive, 518, 497, 498 and 499; and 3d, cash entries No. 19153, 19154, 19155, 19156, 19159. 19160, 19161, 19164, 19165, 19166, 19167, 19168, 19170, 19174. 19193, 19195, 19197, 19198, 19202, 19203, 19217, 19225, 19247 to 19253 inclusive.

You will note on your records the cancellation of the said locations and cash entries referring to this letter and that of Jan 30th, 1868.

The B. L. warrants and pieces of scrip used in this case as before stated, are herewith inclosed that you may return them to the proper parties for relocation according to law.

In regard to the cash entries, you will notify the parties that the purchase-money paid thereon will be refunded, on the application

through you in the usual form.

The tracts covered by the canceled entries you will offer for sale to the highest bidder at a time which you will fix, and of which you will give public notice without delay, according to the form of advertisement enclosed herewith, which embraces a description list of the tracts in question, and should any of the tracts remain unsold after such offering, they will, the day after, be subject to ordinary private entry by the first legal applicants.

You will accordingly fill up the blanks left in the enclosed advertisement by inserting the date and the time to be fixed for the offering of the tracts, attaching thereto your official signature, and cause the same to be published at least once a week for sixty days preceding the time for the offering, in some newspaper of general cir-

culation in the vicinity of the lands.

You will promptly report your proceeding pursuant to these instructions.

Very respectfully, your ob't serv't,

JOS. S. WILSON, Commissioner.

After like offer, objection, ruling, and exception, defendant's counsel read

EXHIBIT 152.

SURVEYOR GENERAL'S OFFICE, St. PAUL, May 13th, 1858.

S. B. Treadwell, Esq., commis'r State land office, Lansing, Michiigan.

SIR: By desire of the surveyor general, who left this yesterday morning with the maps, field notes, etc., of the surveys in Michigan, to be transferred to your charge on the part of the State, I 292

have this day mailed to your address the original supplemental lists of swamp or overflowed lands in townships contained within the "Cheboygan," "Grand River," and "Saginaw" land districts, as made up from the resurveys platted since the date of the last supplemental lists of said land districts, which were transferred with other papers to your charge on May, 1857. Very respectfully, your ob't serv't,

(Signed)

W. R. WOOD. Chief Clerk Sur. Gen'l's Office.

(File vault.)

After like offer, objection, ruling and exception, defendant's counsel read a duly certified copy from the State land office of Michigan,

Ехнівіт 153.

Original.

Supplemental List E.

List of swamp or overflowed lands prepared under the act of Congress approved Sept. 28th, 1850, and in accordance with instructions from the Commissioner of the General Land Office, situate in the Cheboygan land district, in the State of Michigan, in townships resurveyed and platted from Feb'y 16th, 1857, to May 1st, 1858, this list being intended to supersede or be in the place of list of swamp lands heretofore made of townships contained in it.

Description.	Section.	Town.	Range.	Acres.	Remarks.
Lot No. 1	. 25	N. 98	W. 3	20.94	
Lot No. 3	46		\supset	40.01 40.00	
NE I NW I	. 36			160.00 160.00	
S W ‡		44	-	160.00	

Erasure in pencil in original.

Description	on. Section.	Town.	Range.	Acres.	Remarks.
		N.	W.		
293 W ½ S	E 4 36	28	3	80.00	561.95
SEIS	SW 1. 2	"	4	40.00	
N E fr. 1 N E	fr. 1 6	44	1	40.18	
NW fr. 1 NE	fr. 1. "	66	9	40.02	
S 1 N E fr. 1		44	/"	80.00	
NE fr. 1 NW	fr. 1. "	"	"	39.85	
NWfr. 1 NW		"/	44	34.74	
SWfr. INW	fr. 1. "	1	**	34.95	
SEINW fr	. 1 "	"	44	40.00	
E 1 S W fr. 1	"	-	64	80.00	
NW fr. 18 W	fr. 1. "	, "		34.90	
SW fr. 1 SW	fr. 1. "	+4	1	34.85	
W 1 S E 1		66	")	80.00	
S 1 S W 1	11	"	/"	80.00	
SW fr. 1 SW	fr. 1. 18	"	**	35.73	
NWfr. INW	fr. 1. 19		66	35.50	
SWfr. 1 NW	fr. 1. "	("	**	34.98	
NW fr. 1 SW	fr. 1. "	-	66	34.36	
$E_{\frac{1}{2}}SW_{\frac{1}{4}}$		"	— (80.00 8	80.06

I certify that the foregoing list of swamp or overflowed lands, prepared under the act of Congress of Sept. 28th, 1850, has been correctly made from the original plats of townships that have been resurveyed in the Cheboygan land district in the lower peninsula of Michigan.

C. L. EMERSON, Surveyor General.

Surveyor general's office, St. Paul, May 13th, 1858.

Italic figures under "Remarks" in red ink in original. Erasure in pencil in original.

294 And after like offer, objection, ruling and exception, defendant's counsel read from a copy duly certified by the State land office of Michigan,

Ехнівіт 154.

Approved List No. 11, Ionia.

No. 11.

A list of swamp and overflowed lands selected as enuring to the State of Michigan under the provisions of the act of Congress approved September 28th, 1850, in the district of lands subject to sale at Ionia, Michigan.

Description.	Sec.	Town.	Range.	Acres.
W 1 CC W 1		N.	W.	
$W_{\frac{1}{2}}$ of $S_{\frac{1}{2}}$ $W_{\frac{1}{4}}$	1	24	9	80.00
SE t of SW t	1	44	4.6	40.00
SE 1 of NE fr'l 1	$\frac{2}{2}$	44	4.6	-40.00
S W 4 of S E 4	2	44	44	40.00
E 1 S E 1	2	4.6	44	80.00
SW t of SE t	4	44	4.6	40.00
E 1 of S E 1	4	44	66	80.00
SE 1 of NE fr'l 1	6	44	44	40.00
SE 4 of SE 4	7	44	4.6	40.00
SE 4 of NE 4	8	46	4.6	40.00
SW tof SW t	8	46	4.6	40.00
E 1 of S W 1	8	4.6	46	80.00
NW 4 of SE 4	8	66	66	40.00
8 W 1 of N E 1	9	**	44	40.00
S ½ of N W ‡	9	44	+6	80.00
NE 4 of NE 4	11	4.6	44	40.00
N W 4	12	6.6	66	160.00
W 1 of N E 1	13	6.6	44	80.00
$\begin{array}{c} W \stackrel{1}{\stackrel{1}{\stackrel{1}{\stackrel{1}{\stackrel{1}{\stackrel{1}{\stackrel{1}{\stackrel{1}$	13	6.6	6.6	80.00
SE 101 S W 1	14	4.6	4.6	40.00
S E 4	14	4.6	4.6	160.00
W ½ of N W ¼	17	44	**	80.00
N E 1	18	44	46	160.00
295 SE 1 of N W fr'l 1	18	24	9	40.00
S W fr. 4 of S W fr'l 4	18	46	66	53.61
E ½ of S W fr'l ¼	18	44	66	80.00
W ½ of S E ¼	18	46	64	80.00
N E 4	19	44	44	160.00
E ½ of N W fr'l 4	19	44	66	80.00
N W fr'l 1 of N W fr'l 1	19	4.6	44	54.01
S W fr'l 1 of N W fr'l 1	19	6.6	66	54.31
N W fr'l ‡ of S W fr'l ‡	19	66	6.6	54.61
S W fr'l ‡ of S W fr'l ‡	19	44	44	54.91

Description.	Sec.	Town.	Range.	Acres.
		N.	W.	
E ½ of S W fr'l ¼	19	24	9	80.00
N W 1 of S E 1	19	4.6	44	40.00
N ½ of N W 4	20	66	44	80.00
S W ‡ of S E ‡	22	46	66	40.00
$\mathbf{E} \stackrel{1}{\scriptscriptstyle 2}$ of $\mathbf{S} \stackrel{1}{\scriptscriptstyle 2} \cdots $	22	44	44	80.00
N E 1	23	44	44	160.00
$\mathbf{E} \stackrel{1}{=} \mathbf{of} \mathbf{N} \mathbf{W} \stackrel{1}{=} \dots$	23	44	4.6	80.00
S W ‡ of N W ‡	23	44	44	40.00
S W 1	23	66	44	160.00
W $\frac{1}{2}$ of S E $\frac{1}{4}$	23	44	44	80.00
NE tof SE t	23	68	66	40.00
W ½ of S W ½	24	6.6	4.6	80.00
SE t of NE t	25	4.6	44	40.00
W ½ of N E ¼	25	64	44	80.00
$\mathbf{E}_{\frac{1}{2}}$ of \mathbf{S} $\mathbf{E}_{\frac{1}{4}}$	25	44	66	80.00
$S \stackrel{1}{\stackrel{1}{}{}} \text{ of } S \stackrel{W}{\stackrel{1}{}{}{}} \dots \dots \dots$	26	64	44	80.00
E ½ of N E ¼	27	66	44	80.00
N W 4 of N E 4	27	44	44	40.00
SW t of NE t	30	4.6	6.6	40.00
E 1 of N W fr l 1.	30	4.6	44	80.00
N W Irl t of N W fr l t	30	44	41	54.10
S W fr'l 1 of N W fr'l 1	30	47	"	52.21
N W fr'l ‡ of S W fr'l ‡	30	6.6	6.6	50.31
$S W fr'l \frac{1}{4} of S W fr'l \frac{1}{4} \dots$	30	44	44	48.42
$E_{\frac{1}{2}}$ of S W fr'l $\frac{1}{4}$	30	64	66	80.00
296 $W_{\frac{1}{2}}$ of S E $\frac{1}{4}$	30	24	9	80.00
$W_{\frac{1}{2}}$ of N E $\frac{1}{4}$	32	66	6.	80.00
SE 4 of NE 4	32	4.6	54	40.00
N W ‡	32	44	4.2	160.00
E ½ of S W 4	32	68	44	80.00
S E 1	32	44	65	160.00
S W 4	33	44	44	160.00
W ½ of S E ¼	33	44	64	80.00
SE t of SE t	33	61	44	40.00
S 1 of N E 1	34	64	66	80.00
S W 4 of S W 4	34	44	44	40.00
$\mathbf{E}_{\frac{1}{2}}$ of $\mathbf{S}_{\frac{1}{2}}$ W $\frac{1}{4}$	34	6.6	4.6	80.00
W 1 of S E 1	34	66	44	80.00
N E ‡ of S E ‡	34	44	66	40.00
N ½ of N E ¼	35	44	4.6	80.00
N W 1	35	44	4.6	160.00
N ½ of N E ¼	36	41	66	80.00
N ½ of N W ¼	36	"	44	80.00

Description.	Sec.	Town.	Range.	Acres.	
S E \(\dagger of S W \\ \dagger N E fr'l \(\dagger of N E fr'l \) \(\dagger E fr'l \) \(\dagger of N W \	2 6 6 6 6 6 6 6 6 6 6 6 6 11 18 19 19 19 26	N. 28	W. 4	40.00 40.18 40.02 80.00 39.85 34.74 34.95 40.00 80.00 34.85 80.00 80.00 35.73 35.50 34.98 34.36 80.00	285*

* 285 and erasure in pencil in original.

297 SWAMP LAND DIV., GEN. LAND OFFICE, June 5th, 1866.

This is to certify that the foregoing tracts of land in the Ionia, Michigan, district were all duly selected and reported to this office as swamp land, prior to the date of the confirmatory act 3rd March, 1857.

(Signed)

W. W. CURTIS, Ch'f Cl'k Swamp Div.

GENERAL LAND OFFICE, June 8th, 1866.

Respectfully submitted for approval. (Signed)

J. M. EDMUNDS,

Commissioner.

DEPARTMENT OF THE INTERIOR, June 9th, 1866.

The foregoing list of selections is hereby approved subject to any valid legal right that may exist to any of the tracts therein described.

(Signed)

W. T. OTTO, Act'g Secretary.

GENERAL LAND OFFICE, June 13th, 1866.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the foregoing is a true copy of approved list No. 11 of swamp and overflowed lands selected as enuring to the 28-331

State of Michigan, under the act of Congress approved September 28th, 1850, in the district of lands subject to sale at Ionia, Michigan.

In testimony whereof, I have hereunto subscribed my name and caused to be affixed the seal of the General Land Office, [SEAL.] at the city of Washington, the day and year above written.

J. M. EDMUNDS,

Commissioner.

298 And after like offer, objection, ruling and exception, defendant's counsel read

EXHIBIT 155.

STATE OF MICHIGAN, EXECUTIVE OFFICE, LANSING, June 20, 1866.

Hon. J. M. Edmunds, Commissioner of the Gen'l Land Office, Washington, D. C.

Sir: I have the honor to acknowledge the receipt of a certified copy of approved list No. 11 of swamp and overflowed lands in the Ionia district, selected as enuring to the State of Michigan under the act of Congress approved Sept. 28th, 1850, embracing 130,162.40 acres.

I have also the honor to request that patents for said lands may issue to the State of Michigan, as soon as practicable, conveying the fee-simple title thereof to said State.

I have the honor to be, very respectfully, yours, etc.,

HENRY H. CRAPO, Governor of Michigan.

And after like offer, objection, ruling, and exception, defendant's counsel read from a copy duly certified by the State land office of Michigan

Ехипвіт 156.

THE UNITED STATES OF AMERICA.

No. 22.

To all to whom these presents shall come, Greeting:

Whereas, by the act of Congress approved Sept. 28th, 1850, entitled an "Act to enable the State of Arkansas and other States to reclaim the 'swamp lands' within their limits," it is provided that all the "swamp and overflowed lands" made unfit thereby for cultivation within the State of Michigan, which remained unsold at the passage of said act, shall be granted to said

And whereas, in pursuance of instructions from the General Land Office of the United States, the several tracts or parcels of land hereinafter described have been selected as "swamp and overflowed lands" enuring to the said State, under the act aforesaid, being situated in the district of lands subject to sale at Ionia, Michigan, to wit:

Township 28 N, R 4 west.

The southeast quarter of the southwest quarter of section two; the north half, the southwest quarter, and the west half of the southeast quarter of section six; the south half of the southwest quarter of section eleven; the southwest fractional quarter of the southwest fractional quarter of the southwest fractional quarter, and the northwest fractional quarter of the southwest fractional quarter of section nineteen; and the east half of the southwest quarter of section twenty-six; containing in all eight hundred and eighty acres and six-hundredths of an acre.

Township 24 N, R 9 west.

The west half of the southwest quarter, and the southeast quarter of the southwest quarter of section one; the southeast quarter of the northeast fractional quarter; the southwest quarter of the southeast quarter, and the east half of the southeast quarter of section two; the southwest quarter of the southeast quarter, and the east half of the southeast quarter of section four; the southeast quarter of the northeast fractional quarter of section six; the southeast quarter of the southeast quarter of section seven; the southeast quarter of the northeast quarter, the southwest quarter of the southwest quarter, the east half of the southwest quarter, and the northwest quarter of the southeast quarter of section eight; the southwest quarter of

the northeast quarter of section eight; the southwest quarter of the northeast quarter, and the south half of the northwest quarter of section nine; the northeast quarter of the north-

east quarter of section eleven; the northwest quarter of section twelve; the west half of the northeast quarter, and the west half of the southeast quarter of section thirteen; the southeast quarter of the southwest quarter, and the southeast quarter of section fourteen: the west half of the northwest quarter of section seventeen; the northeast quarter, the southeast quarter of the northwest fractional quarter, the southwest fractional quarter of the southwest fractional quarter, the east half of the southwest fractional quarter, the west half of the southeast quarter of section eighteen; the north fractional half, the southwest fractional quarter, and the northwest quarter of the southeast quarter of section nineteen; the north half of the northwest quarter of section twenty; the southwest quarter of the southeast quarter, and the east half of the southeast quarter of section twenty-two; the northeast quarter, the east half of the northwest quarter, the southwest quarter of the northwest quarter, the southwest quarter, the west half of the southeast quarter, and the northeast quarter of the southeast quarter of section twentythree; the west half of the southwest quarter of section twenty-four; the southeast quarter of the northeast quarter, the west half of the northeast quarter, and the east half of the southeast quarter of section twenty-five; the south half of the southwest quarter of section

twenty-six; the east half of the northeast quarter, and the north-west quarter of the northeast quarter of section twenty-seven; the southwest quarter of the northeast quarter, the west fractional half, and the west half of the southeast quarter of section thirty; the west half of the northeast quarter, the southeast quarter of the northeast quarter, the east half of the southwest quarter, and the southeast quarter of section thirty-two; the southwest quarter of the southeast quarter of section thirty-three; the south half of the northeast quarter, the southwest quarter of the southwest quarter, the west half of the southwest quarter, the west half of the southwest quarter, the west half of

the southeast quarter, and the northeast quarter of the southeast quarter of section thirty-four; the north half of the northeast quarter, and the northwest quarter of section tbirty-five; the north half of the northwest quarter, and the north half of the northwest quarter of section thirty-six, containing in all five thousand six hundred and seventy-six acres and forty-nine hundredths of an acre, according to the official plat of survey of the said lands returned to the General Land Office by the surveyor general, and for which the governor of the said State of Michigan did, on the twentieth day of June, one thousand eight hundred and sixty-six, request a patent to be issued to the said State, as required in the act aforesaid.

Now, therefore, know ye, that the United States of America, in consideration of the premises and in conformity with the act of Congress aforesaid, have given and granted and by these presents do give and grant unto the said State of Michigan, in fee-simple, subject to the disposal of the legislature thereof, the tracts of land above described.

To have and to hold the same, together with all the rights, privileges, immunities and appurtenances thereto belonging, unto the said State of Michigan, in fee-simple, and to its assigns forever.

In testimony whereof, I, Andrew Johnson, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and sixty-six, and of the Independence of the United States the ninety-first.

By the President:

ANDREW JOHNSON. By EDW. D. NEILL, Secretary. MARTIN BUELL,

Acting Recorder of the General Land Office ad Interim.

Recorded vol. 2, pages 400 to 417 inclusive.

After like offer, objection, ruling and exception, defend-302 ant's counsel read

Ехнівіт 157.

STATE LAND OFFICE, LANSING, April 5th, 1859.

To his excellency M. Wisner.

Dear Sir: I herewith enclose a true copy of a letter from Thos. A. Hendricks, Commissioner of the General Land Office at Wash-

ington.

Also a list accompanying the same letter embracing a list of the towns approved and patented to the State under the original sur-Also a list that have been approved and not patented to the State. I also send you document No. 2, with description of the towns and ranges, showing the difference in the amount of swamp lands under two surveys. Also under the two lists sent up to this office, and have been compared and found correct, or nearly so, which amounts to 78,965 and ninety-seven one-hundredths A. less by the resurvey, which operates against the interests of the State, not only in the number of acres, but much more so in the quality of the land. The difference in the lands now patented to the State between the old and the new survey amounts to 235,000 A., and I judge by this communication that the department at Washington do not propose to change that list.

And under all circumstances in the case, I don't know why they cannot give us the patents under the old list, as approved, with the

same propriety that they have the others.

The erroneous surveys were known to the department before these patents were made, and must have come within the knowledge of the department about the time Congress made the law granting the swamp lands to the State. The resurveys commenced in 1852, and continued up to 1856, from year to year, and was sent to the department yearly I should suppose. I herewith en-

close to you document No. 3, which you can examine. It 303 has some illustrations showing the discrepancy in the two surveys, and the trouble in locating a portion of the lands contained

in the patents from G. Government.

We have about 3,000 to 4,000 acres that cannot be located under

the new surveys.

I hope you will look the whole matter over, and answer the enclosed letter as soon as you can consistently.

We have continual applications for these swamp lands that have not been patented.

Respectfully,

JAMES W. SANBORN.

(Enclosed in the foregoing was a letter of which Exhibit 23 is a opy.)

After like offer, objection, ruling, and exception, defendant's counsel read from a report of the committee on public lands to the legislature of 1861 as

Ехнівіт 158.

Legislature, 1861.

House Doc. No. 9.

(No. 9.)

Report of the Committee on Public Lands Relative to the State Swamp Lands.

The committee on public lands, to whom was referred so much of the governor's message as relates to the public lands, have had

the same under consideration, and direct me to report:

That the policy heretofore inaugurated to reclaim the swamp lands by means of roads and ditches, meets our approbation. The law regulating the same, however, should be so amended as to lessen the expense, and still be more efficient. In accordance with this view we have reported a bill amendatory to act No. 117, of Session Laws of 1859, the provisions of which are, in our opinion, amply sufficient to accomplish the ends sought:

1st. There is to be but one commissioner.

2d. The contractor may select his lands upon the approval of his contract by the State board.

3d. He may make the selection from any lands applicable to his road without regard to county limits in which the road is lo-

cated

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The single commissioner, being at all times subject to direction and control, or removal by the State board, and being obliged to report as often as said board shall direct, is under such restraint as in our opinion will be an ample safeguard against abuse of his powers.

The saving of expense by having only one instead of three commissioners, as at present provided, is a sufficient argument in favor

of the change.

The provision for withholding from market the lands selected by the contractor, until the time of completing his work, it is believed will more effectually secure the taking of such jobs by responsible men, with capital to enable them to go on with the same independent of any aid from the treasury, thus making the lands alone build

the roads and construct the ditches.

The right of a contractor doing a job in one county, to select his lands in another, will in many instances enable such contractor to take lands convenient to his residence, though his work may be done in a distant county, and though the land selected, as will often be the case, may be of less intrinsic value, it is more desirable to him from the fact of its being in his immediate vicinity; while the lands on the road constructed will be left open to entry by actual settlers.

We find that the State is at this time indebted to contractors on roads for work already done, to the amount of \$30,507.71, payable

according to their contracts, in cash. (See statement A hereunto

Some of said contractors have expressed a willingness to take lands in liquidation of their entire claim, and others a part of theirs at least, provided they can have the privilege of making the

selection from any of the swamp lands in the State. What 305 · difference can it make to the State whether the lands be taken, or the money arising from the sale of the same whenever located, as is now the case. There can certainly be no objection to this mode of payment, and if such right of selection is more valuable for the payment of a debt already due, it is equally so for the construction of new roads.

In order to give the house a better understanding of the whole matter, the committee have procured and herewith present a statistical table (marked B), whereby it will be seen that the whole amount granted to the State is 5,890,361 acres, of which the State has received patents for 5,082,375 acres, leaving unpatented 807,985

acres.

Amount disposed f, 429,489 acres, showing the amount unsold to be 5,460,871 acı Included in the amount disposed of is the amount licensed, 7: 2 acres.

By reference to t. statistical table herewith annexed, the amount

in each county will be easily ascertained.

It will be seen that the amount of land yet undisposed of is very great, and that we need have no fear of exhausting it by liberal appropriations for road and drainage. It should not be squandered, though the policy of putting it into valuable and permanent improvements, calculated to induce settlers to occupy and cultivate it, to as great an extent as possible, is earnestly recommended.

The committee are decidedly of the opinion that the appropriation of the lands themselves, rather than agreeing to pay money hereafter, to accrue from sales, is far the best policy; as in so doing the contractor will know for a certainty that his pay is ready on the completion of his work, instead of being left in doubt as to when the funds will be realized. Besides, the State will at no time be a debtor, with inability to cancel the claim according to her agree-

ment with the contractor.

The committee are also of the opinion that the granting of these lands to actual settlers by a former legislature was a move 306 in the right direction. They would, however, recommend such a change in the law as will allow the settler to take 60 acres, or any fractional lot over 40 and less than 80 acres, or even 30 and less than 120 acres; paying for all over 80 acres, in the latter ase, at the minimum price paid by law, and at the same time pro-riding some more effectual means for insuring the drainage, improvement and occupancy of the homestead thus donated. rant of 80 acres would induce a more desirable class of persons to ettle on the lands, especially if such persons were allowed to purhase an additional 80 acre lot under the provisions of the act for he sale by payment of one-quarter down, and we recommend that uch a provision be incorporated into the act as an amendment to

the law now in force. The occupant under license should also have the privilege at any time, of paying for the land licensed at the

minimum price, and receive a patent from the State.

In accordance with these suggestions the committee have prepared and herewith present a bill embodying such provisions as they believe will meet your approbation, and recommend its passage, and ask to be discharged from further consideration of the subject.

All of which is respectfully submitted.

J. C. WATERBURY, Chairman.

307 Statement B.

Swamp-land Statement, Showing Amount Sold, Licensed, and Unsold in Each County to January 1st, 1861.

County.	Amount swamp land in.	unt pat- ented.	nount not patented.	Amount sold, including li- censes.	Amount unsold.	ount li-
	Amour	Amount p.	Amount	Amount includ censes.	Атопп	Amount censed.
Alcona	122,940.15	122,940.15		1,343,92	121,596,23	144.25
Allegan	33,169:17	33,169.17			16,982.01	6,145.99
Alpena	251,014.73	251,014.73		4,368,50	246,646.23	
Antrim	38,980.50		38,980,50		38,980.50	
Bay	117,174.42	117,174.42		15,112.44.	102,061.98	
Barry	5,167.75	5,167.75		4,467.97	699.78	1,451.28
Berrien	7,432.09	7,432.09		7,326.80	105,29	1,101.40
Branch	4,499.42	4,499.42		4,499,42		
Calhoun	12,910.65			12,362.95	547.70	40.00
Cass	7,421,39	7,421.39		6,853.87	567.52	30.00
Cheboygan	177,540,33	139,819,22	37,721.11	2,065 06	175,475.27	1,211.65
Chippewa	531,573.56	531,573.56		467.60	531,105.96	
Clare	93,720.56	59,950.08	33,770.48	2,951.92	90,768,64	210.10
Clinton	23,312.35	19,683.91	3,628,44	12,038.40	11,273,95	555.17
Crawford	41,311.65	23,970.37	17.341.28		41,311.65	000.11
Delta	498,635.24	498,635.24		3,914.95	494,720,29	
Eaton	15,237.99	15,237.99		10,684.12	4,553.87	1,703.81
Emmet	105,808.28		105,808.28		105,808.28	1,100.01
Genesee	4,197.64	4,197.64		3,671.15	526.49	952.03
Gladwin	100,643.25	100,643.25		2,462.27	98,180,98	002.00
Grand Traverse.	29,264.95		29,264.95		29,264.95	* * * * * * * *
Gratiot	50,750.38	47,885.15	2,865.23	13,606,45		4,227.62
Hillsdale	1,299.78	1,299.78		1,299.78		Tyear de
Houghton	98,711.43	98,711.43		11,175.48	87,535,95	
Huron	170,301.78	A 40		15,761.31	154,540.47	6,428,35
Ingham	16,333.75	16,333.75		12,110,35	4,223.40	320.00
Ionia	11,070.51	11,070.51		8,280.12	2,790.39	1.235.50
losco	69,013.71	69,013.71		890.19	68,123,52	342.64
Isabella	53,093.63	27,936.51	25,157.12	3,717.72	49,375,91	480.00
Jackson	4,801.45	4,801.45		4,801.45	10,010.01	400.00
Kalamazoo	5,684.78	St. Indian or her		5,519.41	165,37	
Kalkaska	44,634.15		44,634.15	Sporter 1	44,634.15	
Kent	14,791.18	14,791.18		11.052.81	3,738.37	2,717.74
Lake	23,266.69	12.082.19	11,184.50	,000-01	23.266.69	2,131.14
Lapeer	20,855.89	20,855.89		12,953.19	7,902.70	1 507 00
eelanaw	33,421.20 .		33,421.20	14,000,10	33,421.20	
Lenawee	1,800.00	1.000.00		1.800.00	00,721.20	

Statement B-Continued.

County.	Amount swamp land in.	Amount pat- ented.	Amount not patented.	Amount sold, including 1i- censes.	Amount unsold.	Amount li-
Linia autom	0.500.04			-		-
Livingston Mackinae	3,796.64	3,796.64		3,134.16	662.48	
Mackinge	353,223.22	353,223.22		1,606.25	351,616.97	865 70
Macomb	41.65	41.65		41.65		
Manistee	47,633.60		47,633.60		47,633,60	
Manitou	3,500.96	3,500.96		399.71	3,101.25	80.00
Marquette	464,945.55	464,945.55			461,030,69	
Mason	42,497.16		42,497.16		42,497,16	
Mecosta	61,681.29	61,681.29		11,769.88	49,911.41	3,394.00
Midland	35,850,88	35,850.88		2,703.83	33,147.05	240.00
Missaukee	104,244.08		104,244.08		104,244.08	210.00
Monroe	4,563.85	4,563.85		2.00	4.561.85	
Montealm	33,341.55	33,341.55		10,716,77	22,624.78	4 521 64
Montmorency	102,470.23	102,470.23		160,00	102,310.23	4,001.04
Muskegon	47,881.12		13,876,38	2,492,27	45,388.85	720.00
Newaygo	74,170.58		30,162.80		71,355.57	
Oakland	2,365,45	2,365,45		2,115,99	249,46	120.00
Oceana	44,045.87	********	44,045.87	2,110,00	44.045.87	
Ogemaw	65,121.44	65,121.44	***********	1,691.00	63,430,44	
Ontonagon	109,191,61			513.95		
Osceola	46,629,95	46,629,95		4,725.80		
Oscoda	22,924.75	22,924.75		4,4 20,80	41,904.15	
)tsego	39,287.70	31,734.97	7,552.73		22,924.75	
Ottawa	27,699.27	27,699.27	1,000.10	5 700 90	39,287.70	
Presque Isle	217.867.90	217,867,90		5,709.39	21,989.88	2,120.00
308 Roscommon	100,275.37	42,656,91	57 010 10	987.30	216,880,60	
Saginaw	65.875.27		01,015,40	00.000.00	100,275.37	
anilac	143,807.61	1 10 00= 01		20,066.60	45,808.67	7,338.24
chooleraft	569,640,31		49,237,32	57,820.74	85,986.87	4,427,87
hiawassee	17.061.78	17,061.78			569,640.31	
t. Clair.	28,427.57			13,013,41	4,048.37	1,959,79
t. Joseph	3,383,06	28,427.57	******	17,093.85	11,333.72	1,798.84
uscola	108,932,93	100 000 00		3,343.06	40,00 .	
an Buren	26,985,06	108,932.93	******	21,361.82	87,551.11	7,663.87
Vashtenaw	1,749.94	26,985.06		25,673.96	1,311.10	880,00
Vayne	120.00	1,749.94		1,749.94 .		
Wexford		120.00 ,				
TARREST CO. C.	- 4 yelest . 11 .		27,339,91		27,333,91	

 $Totals. \dots 5,890,361.49\ 5,082,375.94\ 807,995.55\ 429,489.96\ 5,460,871.53\ 75,422.07$

And after like offer, objection, ruling, and exception, defendant's counsel read

Ехнівіт 159.

STATE OF MICHIGAN, LANSING, July 10, 1861.

Hon. James M. Edmunds, General Land Office, Washington.

Dear Sir: Please find enclosed Statement B, showing the condition of swamp lands in the State of Michigan.

The amount selected according to the rule adopted by the Land Office Department, and remaining unpatented, is shown by counties 29—331

in the third column of the tabular statement, and it is to this particular class of land denominated in this office unpatented, to which I desire to call the attention of the Commissioner of the General Land Office.

When probably in the usual routine of your office may we expect patents for the balance accruing to the State of Michigan?

Very respectfully,

SAM'L S. LACEY, Com.

Endorsed: F. 80, 765, Sam'l S. Lacey, Lansing, Mich., July 10, 1861. Encloses statement showing the condition of the swamp lands in Michigan. R. Skinner. July 25, 1861.

The statement "B" enclosed is the same as that attached to Exhibit 158.

After like offer, objection, ruling and exception, defendant's counsel read extracts from the reports of the commissioner of the State land office of Michigan, for the years 1860 to 1878, inclusive, as

Ехнівіт 160.

Report for 1860.

J. W. Sanborn, commissioner.

Discusses swamp-land question in a general way, concerning the

policy of the State, and on page 17 says:

"The complications of the swamp-land question between the State and General Government have not been diminished during my administration, and in view of the constantly increasing difficulties produced by delay, I commend them to your particular attention. With much care I have caused to be prepared lists conclusively showing the discrepancies which prevent an adjustment of the questions which have arisen, and add a summary thereof hereto.

"5,857,462.05 acres have been approved to the State, of which 5.049,125.44 acres have been patented, leaving unpatented and unadjusted 808,336.61 acres. This statement has been made from the approved lists and patents, and is believed to be very nearly correct. But the amounts may be somewhat changed as errors in descriptions are discovered and corrected, and also, the actual amount available may be materially altered by the discrepancies between old and resurveys, 133 townships (74 of which were patented) as approved by the evidences of the old survey, and are affected by subsequent resurveys. In some of the townships only two or three

miles of section line were run. On an average about oneall of the lines in these townships were run, consequently

the topography, subdivisions of sections, amount and location, have been in all somewhat, and in some way very much altered, the quantity of swamp land generally being much more on the plats of the old than the resurvey. As the plats of the resurvey of these townships were completed, the surveyor general, in accordance with the evidences thereof, made (except 7 townships) new lists of swamp land selections from the plats of the resurvey. Of

said 7 townships this office has calculated the amount and used it for the purpose of this statement as if given by the surveyor general. From this new list, as far as it regards the 74 patented townships, a list has been made of such subdivisions contained therein as are not in the patents, amounting to 67,393.44 acres. The amount given in the patent for said 74 townships is 636,670.89 acres, from which we deduct 2,121 acres which cannot be located without a precedented alteration of the plats of resurvey, and 3,986.18 acres that cannot be located at all, and 10,365.64 acres excess in patent over resurvey in such subdivisions as can be located on the plats of resurvey, and add 2,579.49 acres excess in resurvey over patent in such subdivisions as can be located on the plats of resurvey, and we have left us the available amount patented in said townships, 622,779.56 acres, which is 244,476.15 acres more than is contained in the new lists in the same townships. In the remaining 59 townships, which are not yet patented, the amount approved is 306,015.33 acres, while the amount in the new lists thereof is only 225,412.81 acres, being an excess in the approved lists over the amount in the resurvey of 80,602.52 acres, of which, if patented as approved, about 3,000 acres could not be located on the plats of the resurvey.

"We gather from the correspondence on file in this office between the State authorities and the department at Washington, that the General Government proposes to adopt throughout, the resurvey as the basis of patents. Aside from the foregoing townships, there re-

mains 187, containing 502,321.28 acres, situated west of range 2 west (except towns 8, 9 and 10, north of range 2 west), in the northern, northwestern and western parts of the Lower Peninsula, which are approved by final surveys, but which are not patented. Besides this last amount, five townships near Keweenaw bay are not yet patented, but are approved by final surveys, and either all or a portion thereof have been reserved by order of the President.

"Town 42 north of range 34 west is approved, but it appears to have been accidentally omitted from the patent. In fifteen townships, original selections, amounting to 35,841.95 acres, were made by the surveyor general from final surveys, but are not yet approved by the State.

"In five townships swamp land appears by the official plats to be due to the State, but no selection appears to have been made

"From different official sources, a list of the 'green lands' containing nearly all, has been made. The quantity unpatented is 52.373.55 acres, and the amount patented 5,303.79 acres; 819 acres of swamp land, which was sold by the United States prior to the grant, has been patented to the State, and a portion thereof sold. It is my firm conviction that this grant can never be adjusted by correspondence. The peculiar circumstances of confliction which have arisen, must be settled, and a basis adopted by personal communication between constituted authorities on the part of the State and United States governments. No patents have been received since January, 1859, and I think, therefore, we have reason to fear

that the department at Washington is withholding those about which there is no conflict, as a lever with which to compel the adjustment of the remainder in accordance with their proposition."

312 Report for the Year Ending November 30th, 1861.

Samuel S. Lacey, commissioner.

"A complete list of the unpatented swamp lands, for which the State is justly entitled to patents, by virtue of the act of Congress of the 26th Sept., 1850, has been made and forwarded to the Commissioner of the General Land Office, with an urgent request that patents issue as speedily as possible. A similar list of the lands denominated 'green lands' has been made and forwarded to that department; and we have the assurance of the Commissioner that the matters there referred to shall have as speedy examination and adjustment as the business of his department will allow."

Report for 1862.

Samuel S. Lacey, commissioner.

Page 6, speaking of swamp lands, says:

"It is with great pleasure that I am able to report that my proceedings under the law of 1861 in relation to the unpatented swamp lands have met a prompt response from the present Commissioner of the General Land Office, and that we have received patents for 362,463.28 acres; and that in the communication heretofore referred to, the Commissioner informs me that 'we have also prepared patent No. 15, containing 93,591.25 acres; and patent No. 16, containing 72,585.49 acres; making a total of 533,730.02 acres since last report.' This in the Ionia and Traverse City land districts.

"It is confidently believed that all the questions in relation to our land grants, heretofore unsettled, between the General Government and this State, are in progress of a speedy and satisfactory

adjustment."

313

Report for 1865.

Cyrus Hewitt, commissioner.

Page 3 says:

"Under act No. 123, session laws of 1861, providing for the selecting and location, the existing deficiency of this class of lands due the State by virtue of the act of Congress approved May 20, 1826, and for all subsequent land grants made by Congress to this State, my immediate predecessor forwarded to the Commissioner of the General Land Office a carefully prepared list of all deficiencies as a basis by which the State could select such balances due. This statement was acted upon by the Commissioner of the General Land Office, and transmitted to this office, where it was again compared and found to disagree in some material points from the plats and

records in this office, and it was again forwarded to the General Land Office for comparison and correction, and has not yet been returned to this office; hence, no selections, on account of the deficiencies, have as yet been made.'

Page 6:

"It would seem desirable that the list of "green lands" so often referred to in the reports of my predecessors, should be, in some way, adjusted by the department at Washington, and the descriptions carried into patent, so that the State can grant patents to those who claim title under act 166 of 1855. Fifteen years have passed away since the passage of the grant, and the difficulty seems to be no nearer a proper adjustment, or being finally settled, than when it commenced."

Report for 1866.

Cyrus Hewitt, commissioner.

Page 7:

"We have received approved lists of about 231,000 acres of the swamp lands which were omitted in former lists on account of the difficulty of making the selections, by reason of the changes made between the old or fraudulent surveys in some sections of the State, and the resurveys. When patents are received for the lands embraced in such lists, the lands can be speedily brought into market. No public sale has been make of any of the swamp lands since 1863."

Report for 1868.

B. D. Pritchard, commissioner.

Page 7:

"The entire amount of swamp lands conveyed to the State by the act of Congress have been patented with the exception of about 40,000 acres, lying in Cheboygan and Houghton counties; and all, excepting about 100,000 acres, have been placed in market."

Report for 1869.

B. D. Pritchard, commissioner.

Page 6:

"The greater portion of the swamp lands have heretofore been placed in market. There is still remaining, however, about 100,000 acres unoffered. A public sale is now pending, to take place on the 6th day of January next, at which time it is expected to place in market the entire body of swamp lands for which the State has received patents.

"The amount remaining unpatented is about 35,000 acres, lying in the country of Chebovgan, and is embraced in an Indian reservation, and cannot be reached until said reservation is extin-

guished.'

315

Report for 1870.

B. D. Pritchard, commissioner.

Page 7:

"As the swamp lands continue to hold so prominent a position in the resources employed for the development of the State, by means of supplying the country with roads and ditches, and the settlers with homesteads, it has been deemed of great importance.

that a full and reliable statement of the amount and condition of these lands should be placed before the legislature at

this time; and, accordingly, such a statement has been prepared at great labor and with the utmost regard for accuracy, and which is the result of a complete footing and computation of all unpatented swamp lands belonging to the State. This statement will appear at the close of his report in tabular form, and from which it will be shown that the total amount of swamp land passed to the State, under the act of Congress of 1850, was 5,794,308.57 acres; that of this amount 3,160,516.21 acres were in the Lower Peninsula, and 2,633,792.36 acres were in the Upper Peninsula.

"To the amount in the Lower Peninsula as above given should be added 18,823.93 acres conveyed by the General Government to replace the lands sold and commonly known as 'green lands.'"

Report for the Year Ending September 30th, 1872.

Charles A. Edmonds, commissioner.

Page 6 says:

"Of the 36,128,640 acres of land in the State of Michigan, over thirteen and a half millions of acres, or more than one-third the entire area, have been granted to the State for various purposes by the General Government, as will appear from the following statement."

Report for 1874.

L. A. Clapp, commissioner.

Pages 3 and 4 give a list of the lands held by the State, thus:

"The number of acres owned by the State—carefully revised and corrected—is as follows: * * * Swamp patented to State during years 1873 and 1874, not advertised, 2,667.04 acres; swamp, 2,460,850.45 acres; swamp forfeited, 4,117.72 acres; swamp, indemnity, 18,823.93 acres."

Page 7 says:

"Under the congressional grant of September 28, 1850, the State has received patents for 5,838,616 acres of swamp land, so called. Large quantities have, however, proved very valuable for lumbering and agricultural purposes. There remains

yet to be patented to the State several thousand acres. We have secured the approval of 19,863 acres during the fiscal period, which will be carried into patents during the ensuing year."

After like offer, objection, ruling and exception, defendant's counsel read from the records at Washington, D. C.,

Ехнівіт 161.

No. 1, Grand River Land District.

	Sec.	T. N.	R. W.	Acres.	
N E fr'l 1 N W fr'l 1	2	18	3	39.76	Note.—The selection in
$S \stackrel{1}{=} S E \stackrel{1}{\downarrow} \dots$	3	**	66	80.00	town 18 appears to be su-
N E ‡ S W ‡ S W ‡ N W fr'l ‡	66	44	44		perseded by supplemental list No. 3.
$S W \downarrow N W fr'l \downarrow \dots$	"	66	44	40.00	HSt AO. 5.
NW fr1 4 NE fr1 1	4	64	46	39.06	
S ½ N E fr. ‡	**	66	"	80.00	
N W 4 S E 4	44	66	44	40.00	
N E fr'l 1 N W fr'l 1	66	44	64	38.95	
N W fr'l 1 N W fr'l 1	66	"	66	38.84	
$S \stackrel{1}{\underset{\sim}{\downarrow}} N W \text{ fr'l } \stackrel{1}{\underset{\sim}{\downarrow}} \dots \dots$	44	44	66	80.00	
N I S W I	"		66	80.00	
SW 4 SW 4	**	**	66	40.00	
N E fr'l \ N E fr'l \ \	5	44	44	38.79	
S 1 N E fr'l 1	44	66	46	80.00	
S E 1 N W fr'l 1	44	44	66	40.00	
S ½	**	44	66	320.00	
S I N E fr. 1	6	4.4	66	80.00	
NE fr'l 4 NW fr'l 4	44	66	44	38.08	
SE I NW fr'l I	44	44	44	40.00	
SE 1	- 44	66	**	160.00	
$E \stackrel{1}{\underset{E}{\stackrel{1}{\sim}}} S W \text{ fr'l } \frac{1}{4} \dots$	7	"	4.6	80.00	
E ½	"	66	64	320.00	
Section	8	66	44	640.00	
W 1 N W 1	9 "	44	6.6	80.00	
NE ISWILL	44	44	44	40.00	
317 SW 4 SW 4 SW 4 SE 1		44	44	40.00	
SEICWI	9	18	3	40.00	
E 1	10	- 64	44	40.00	
SWI	"	44	4.6	320.00	
WISEI	11	**	**	160.00	
W ½ S E ¼ N E ¼ S E ¼	"	46	"	80.00	
0 117 1 37 317 1		"	44	40.00	
	12	"	4.6	40.00	
N F 1		"	"	80.00	
NE ‡ NW ‡ NW ‡		**	44	160.00	
	14	44	46	40.00	
W 1 N E 4	15	46	44	40.00	
N W 1	"	"	46	80.00	
	"	46		160.00	
117 1 6 117 1	"	44	**	40.00	
2 2 11 4		••	"	80.00	

Sec.	T. N.	R. W.	Acres.	
N W ‡ N E ‡ 17	18	3	40.00	
N E ‡ N W ‡ "	44	66	40.00	
W ½ N W ¼	44	**	80.00	
E 3 N E 4 18	4.6	44	80.00	
N W 1 N E 1 "	44	66	40.00	
$N \to \frac{1}{4} N W \text{ fr'l } \frac{1}{4} \dots $	"	"	40.00	
S W fr'l 1 N W fr'l 1 19	66	66	47.23	
N W fr'l \ S W fr'l \ \ "	44	44	47.28	
O 1. 10 11 11 11 1	"	44	40.00	
$\begin{array}{cccccccccccccccccccccccccccccccccccc$	44	66	80.00	
$ \begin{array}{ccccccccccccccccccccccccccccccccc$	66	66	80.00	
$N \stackrel{?}{\to} \stackrel{1}{\downarrow} N \stackrel{1}{\to} \stackrel{1}{\downarrow} \dots $ "	46	+6	80.00 40.00	
S W 1 "	44	4.	160.00	
N W 4 S E 4 "	44	4.6	40.00	
SE \ SE \ \ "	44	44.	40.00	
S E ¼ N W ¼ 22	44	44	40.00	
N E 1 "	60	44	160.00	
S 1 "	44		320.00	
$N \to \frac{1}{4} N \to \frac{1}{4} \dots \dots 28$	44	44	40.00	
$W \stackrel{1}{=} N E \stackrel{1}{\downarrow} \dots \dots $	44	44	80.00	
N W 1 "	66	44	160.00	
$N_{\frac{1}{2}}$	66	44	320.00	
$N \tilde{E} \stackrel{1}{\downarrow} \dots 30$	66	44	160.00	
IN EAT IN WITH TARREST	46	66	40.00	
2, 1, 11 1 4 2, 11 11 1 4		**	47.41	
$N_{\frac{1}{2}} N E_{\frac{1}{4}} \dots 35$			80.00 40.00	
S W 4 N W 4 36	18	3	80.00(?) 40 acres.	Posted vol.
E ½ N W ¼ "	44	66	80.00	23, p. 12.
N E 1 "	4.6	+4	160.00	
* * *	3/5	*	*	
$N W fr'l \downarrow N W fr'l \downarrow 1$	18	4	34.66	
$S E \downarrow N E fr'l \downarrow \dots 2$	66	4.6	40.00	
N W fr'l 4 N E fr'l 4 "	44	٤.	34.59 Not subdivi	ded.
N W fr'l N W fr'l "	44	44	35.99	
$E_{\frac{1}{2}}SE_{\frac{1}{4}}$	**	64	80.00	
0 11 4 0 11 1	44		40.00	
$ \begin{array}{cccccccccccccccccccccccccccccccccccc$	44	44	80.00	
$W_{\frac{1}{2}} S W_{\frac{1}{4}} \dots \dots 20$ $N_{\frac{1}{2}} N E_{\frac{1}{4}} \dots \dots 25$	44	**	80.00	
$ \begin{array}{cccccccccccccccccccccccccccccccccccc$	44	44	80.00 80.00	
S W 1 N E 1	"	66	40.00	
S E 1 N W 1 "	64	**	40.00	
$N \to 1 \times 1$	44	44	40.00	
S W 1 S W 1	**	44	40.00	
$S \stackrel{1}{\underline{\i}} N \stackrel{4}{E} \stackrel{4}{\underline{\i}} \dots 29$	4.4	"	80.00	
-				

	Sec.	T. N.	R. W.	Acres.
N W 4	29	18	4	160.00
$S_{\frac{1}{2}}$	44	44	64	320.00
SE ‡ N E ‡	30	**	66	40.00
E ½ S E ¼	64	44	66	80.00
S W 4 S E 4	44	66	66	40.00
E ½	31	44	66	320.00
N 1	32	44	44	320.00
N W \ S W fr. \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	+6	4.5	44	40.00
Lot No. 2	44	44	44	34.80
Lot No. 1	44	44	44	47.34
N 1 S E 1	44	44	44	80.00
S W \ S E \ \	66	44	4.6	40.00
	33	44	66	320.00
N W 4 S W 4	44	66	44	40.00
* *	ate	3kt	*	*

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Surveyor General's Office, Detroit, Mar. 29, 1852.

The above list of swamp lands in the Grand River land district, which has been made up in accordance with the instructions from the General Land Office, dated Nov. 21, 1850, embraces all the lands in said district except such as may be found in townships which have been ordered to be resurveyed. The districts reported by Judge Burt and Hiram Burnham to be fraudulent are embraced in the list and marked "F."

The aggregate of unsold swamp lands (excluding 13 townships situated near Grand Traverse bay), according to the above statement, amounts to 1,249,114.73 acres, in which is included the unsurveyed portion of township 9 N, R. 1 W, estimated at 4,680 acres.

*(CHARLES) NOBLE.

Surveyor General.

U. S. LAND OFFICE, IONIA, MICH., Feb. 12, '52.

In the foregoing list the descriptions marked "sold" were sold prior to September 28th, 1850. The descriptions sold since that date are marked, giving date of sale, and noting the kind of payment c. 10s.—or \$1.25 per acre, whether cash or warrants issued under acts of Feb. 11, 1847, or warrants issued under act of Sept. 28, 1850.

The descriptions marked "State," and heretofore selected by the State of Michigan under different laws of Congress.

I have been over with the list twice—have endeavored to be accurate, but have probably made some mistakes.

LOUIS S. LOVEL, Reg'r.

Hon. the sur. gen., Detroit, Mich.

* Rec'd Ap'l 1st, 1852.

320 I certify that the foregoing list of swamp lands in the Grand River land district, Michigan has been made out in conformity with instructions from the Commissioner of the General Land Office, dated November 21, 1850, and his letter of December 12, 1850, and that the location of the said swamp lands is determined by the rule laid down in said instructions of November 21st. Surveyor general's office, Detroit, March 29, 1852.

CHARLES NOBLE,

Surveyor General.

And after like offer, objection, ruling, and exception, defendant's counsel read from a duly certified copy from the General Land Office

Ехнівіт 162.

Swamp Lands.

* Approved Oct. 27, 1853.

No. 1.

A list of swamp and overflowed lands selected as inuring to the State of Michigan under the provisions of the act of Congress approved September 28th, 1850, in the district of lands subject to sale at Ionia, Michigan, viz:

Certified copies of within list transmitted to gov. & R. & R., Jan'y

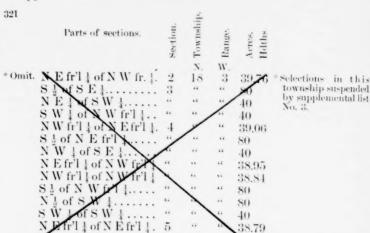
13, 1854.

Gov. request for patents dated Jan'y 31, 1854.

Supplemental list No. 2 rec'd Nov. 3d, 1853, and all townships in this list embraced in same crased.

Approvals entered in tract books.

8 3 of N E fr'l 1 ..



^{*}Small type and erasures in pencil in original copy.

Parts of sections.	Section.	Township.	Range.	Acres. Heths.
E ¼ N W fr'l ¼	5	N. 18	W. 3	40
S of N E fr'l 1 N fr'l 1 of N W fr'l 1	6	**	"/	\$ 0 38.00
5 E 1	44	64	,	40 60
E ½ o S W fr'l ↓ E ½	.7	"	1	80 20
Section $W_{\frac{1}{2}}$ of $W_{\frac{1}{4}}$	8 9	/		40 80
N E of S W S W of S W S W of S E	11	1	46	40 40
S W 1 of S E 1 S E 1 of S W 1	10	/ 	66	$rac{40}{40} = 20$
SW 4 W ½ of SE 4	11/	"	. 1	60 80
NE tof SE to SW tof NW to SW tof NW tof NW	l_2	"	**	40 40
E 1 of N W 1 N E 1	"		" 16	80 50
A	$\frac{14}{15}$	18	** 4	40 10
N W 4 N E 4 of S W 4	10	10	" 10	40 50 40
W 1 of S W 1 N W 1 of N F.	1	"	!	80 10
N E 1 of N W 1	\	44	(40 80
E \(\) of \(\) E \(\)	18 \	1	**	80 10
S W fr. 1 of N W fr. 1.	19	1.	44	$10 \\ 17.23 \\ 17.28$
SE 1 SW fr. 1	20	\	16	10
W 1 of N E 1	21	16	1 8	80 80
N of N E	21	**	/	10 50 10
E of S E	22	44	"	X

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	Parts of sections.	Township.		Acres. Heths.		
		N.	V	V.		
	S 1	18	3	320		
	N E 1 8 N E 1 28 W 1 of N E 1	"	/	40		
	N W 1	/		00		
	N E 1	**	44	020		
	NE i of NW 6.1.			160		
	N W fr'l 4 of Y W fr'l 4 " N 4 of N P 4 35	1.	**	31.31		
	N 1 of N 1 1 35 S W 1 N W 1 36	"	1.	80 40		
	E N W I	**		80		
	* * *	*	*	160		
323	N W fr'l \(\frac{1}{4} \) of N W fr'l \(\frac{1}{4} \) 1 S E \(\frac{1}{4} \) of N E fr'l \(\frac{1}{4} \) . 2	18	4		Pat. No.	2.
	NWfrliof NEfrli	**	+6	$\frac{40}{34.59}$	Do. Do.	
	$\begin{array}{c} N \text{ W fr'l }\downarrow \text{ of } N \text{ W fr'l }\downarrow \text{ "} \\ E \stackrel{1}{2} \text{ of } S \text{ E }\downarrow \dots \dots 11 \end{array}$	44	44	35.99	Do.	
	SW 1 of SE 1	10	4 0	80 40	Do. Do.	
	$W_{\frac{1}{2}}$ of $SW_{\frac{1}{2}}$	44	44	80	Do.	
	$ \begin{array}{cccccccccccccccccccccccccccccccccccc$	4.	4.5	80 80	Do. $Do.$	
	$ \begin{array}{cccccccccccccccccccccccccccccccccccc$	4.	44	80	D_0 .	
	S W \ d of N E \ d		+ 6	40 40	Do. Do.	
	NE 1 of SW 1 "	+ 6	4.0	40	Do.	
	S W 4 of S W 4 " S ½ of N E 4 29	44	+4	40 80	Do.	
	N W "	4.5	9.0	160	Do. Do.	
	S ½	6.6	44	320	Do.	
	E 1 of S E 1 "	0.6	4.4	$\frac{40}{80}$	Do. Do.	
	$\begin{array}{cccccccccccccccccccccccccccccccccccc$	66	46	40	Do.	
	N 1 32	+6	**	$\frac{320}{320}$	Do. Do.	
	NW tof SW frlt. "	66	44	40	Do.	
	Lot No. 2	8.6	44	$\frac{34.80}{47.34}$	D_0 .	
	N 1 of S E 1	* 6	60	80	Do.	
	S W 1 of S E 1	66	60	$\frac{40}{320}$	Do.	
	NW of SW	6.6	4.6	40	Do. Do.	
	* * *	*		8	*	*

Erasures in peneil in original. Italies in red ink in original.

Parts of sections.	Section.	Z Township.	A Range.	Acres.	,
F. XWfr'l \(\) of XW fr'l \(\) SW \(\) of XW fr'l \(\) . SW \(\) \(\) of XW fr'l \(\) . SW \(\) \(2 7	27	4	6.9	0 embraced in supple- 0 mental list No. 2. 3
E t of SW fr'l 1		::/	/	37.10 80.00 40.00 320 80)
W 1 of N E 1	1	/:		80 80 80 320 40	
W ½ of S W ¼	78		66	80 320 80 40	
E ½ of N E ↓ N E ↓ of S b ↓ W ½ of N W ↓ 20 N W ↓ of N W ↓ 22		1	66 66 66	40 80 40 80 40	
W 1 of N E 1 N E 7 of S W 1 S E 4		**	1	80 80 40	
E d of S E fr d	2	**	46	40 40 34.6	

Italies and erasure in red ink in original. small type in pencil in original.

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General Land Office, October 27th, 1853.

Respectfully submitted for approval.

JOHN WILSON.

Commissioner.

Department of the Interior, October 27, 1853.

The lands embraced in the foregoing list are hereby approved to he State of Michigan under the act of Congress app'd 28th Sepember, 1850, subject to any valid legal claim that may exist thereto. R. McCLELLAND, Secretary.

Defendants' counsel then re-read in evidence the patents from the United States to the parties through whom defendants claim title.

EDWARD W. SPARROW, after being duly sworn on behalf of the

defendants, testified as follows:

I reside in Lansing; have lived there 30 years. My business is, the greater part, real estate. My office in Lansing is on Michigan avenue near to the Capitol building—the next block to it. My office has been there during the last five or six years; prior to that time it was farther east on the same street, in the next block, and had been there for some time—probably six years. I am one of the managers of The Michigan Land & Lumber Co., the plaintiff. I am also a member of the Michigan Land & Lumber Co., Limited. The same Mr. Sparrow that made conveyance to the Michigan Land & Lumber Co. of the land in this case, and against whom the State of Michigan filed a bill concerning the lands in question that was carried to the supreme court and reported in the records of the supreme court of this State. I procured my title to these lands through the performance of certain contracts with Livingston county and Clinton

and Shiawassee counties, made under acts of the State of Michigan, one in 1883 and the other in 1885. I became enti-

tled to swamp lands as the assignee of these counties. I can't remember the numbers of the acts or the title. One had reference to the improvement of Cedar river and the other of Looking-glass river. Under those acts I selected the lands that I would take when they had been earned by the performance of the contract.

Q. Were they selected in advance of the performance?

Mr. Champlin: I don't see the object of this testimony. It is objected to as irrelevant.

The COURT: I will admit the question and answer. Exception

for the plaintiff.

By Judge Champlin: Were those selections made in writing? A. Yes, sir.

Mr. Champlin: Then I will object to it farther as not the best evidence.

Question read as follows: "Were they selected in advance of the performance?"

A. No, sir.

Q. When did you complete the performance of the contract under which you obtained the title to those lands now?

Objected to as irrelevant. Objection overruled. Exception for plaintiff.

A. I would like to see the patent to see under what act I obtained it. (Referring to paper) I think in 1886.

Q. How early did you reserve these lands?

A. I didn't reserve any lands. I made my selection in August, I think, 1887, by filing an application with the State land commissioner for the lands, in writing, designating those lands among

others. I got my patent (referring to paper) October 13, 1887. I made the selection myself. I was not present when the patents were filled out.

Q. Do you not know that the patents were signed in blank, and left in the hands of the secretary of state?

Objected to as irrelevant and immaterial. Overruled. Exception for the plaintiff.

A. I do not. I don't know as I remember any particular part of the answer in the case referred to. I remember of having signed and sworn to the answer in that case. I did not understand it at the time that the patents which I received had been signed in blank by the governor and left to the secretary of state. I was not present when the patents were filled out. I did not know what the fact was as to whether they had been signed in blank by the governor. I don't remember having testified upon that subject.

Cross-examination:

In the suit referred to by the counsel for the defendants, a decree was obtained in my favor dismissing the bill of complaint.

WILLIAM L. Webber, sworn on behalf of the defendants, testified: I am a resident of Saginaw, and have been connected with the Flint & Pere Marquette railroad for a number of years last past, and during 1869 I was acting as attorney for the Flint & Pere Marquette railway. I commenced my duties as land commissioner the next year, 1870.

Q. Were you present at the public sale that occurred in November, 1869, in the Ionia office, of large quantities of lands that had been entered by Burt and others, and the entries of which had been canceled and the lands put up at public sale?

A. I was present at the United States land office at Ionia at the time you speak, when lands were sold at public sale, lands 18, 19 N, 3 W. I don't recollect who the claimants were.

Q. What was the occasion of your being present?

Mr. CHAMPLIN: I object to this testimony.

Mr. HANCHETT: The object is to show that the State made no objection or protest to the sale.

Objection overruled. Exception for plaintiff.

A. I was there as attorney for the Flint & Pere Marquette
328 Railroad Company to protest against the sale and make
claim for the certain odd-numbered descriptions that were
offered for sale.

Q. Now, at that sale, was there any notice given in behalf of the State of Michigan, or any protest made to the sale on the part of the State of Michigan?

Mr. Champlin: I object to that question as irrelevant, and not proper foundation laid for it.

COURT: Was the State represented there?

Mr. Stark: I presume it wasn't. I don't know whether it was or not.

Objection overruled. Exception for the plaintiff.

A. None to my knowledge.

Q. I understand you were present at the time the lands were being offered and bid upon?

A. Yes, sir.

Charles A. Rust, sworn on behalf of the defendants, testified: I am one of the defendants in this suit. Amasa Rust is my father. John F. and David W. were my uncles, and George Rust my cousin. At the time myself and Amasa Rust purchased an interest in these lands, we acted in the matter personally. We purchased these lands in question in connection with other lands, a large body. We purchased an undivided interest at a gross sum for the land. I think it was one hundred thous, and dollars.

Q. In the purchase of these lands what title did you understand

you were obtaining?

A. We supposed we were getting a good title.

Objected to as immaterial and incompetent.

Mr. STARK: We will waive the answer until you can get a ruling.

COURT: I think I will admit it as a tendency to show good faith

in the purchase.

Exception for the plaintiff.

I had no knowledge at that time of any adverse claim by the State of Michigan, or by any other person or source to these lands.

Q. Are you the C. A. Rust mentioned in this conveyance?

A. Yes, sir.

Mr. STARK: I offer in evidence a conveyance from the State of Michigan to the auditor general to C. A. Rust of all the lands in controversy in this case, dated July 30, 1892, and for the taxes for the year 1888 at a sale made May 4th, 1891.

Mr. Champlin: We object to the introduction of that deed in evidence, on the ground that it is irrelevant to the issue, and it is incompetent, and not admissible under the plea of defendants.

Overruled. Exception for the plaintiffs. Marked "Defendants' Exhibit 163."

Cross-examination:

Q. You stated you had no knowledge of any defect in the title. Had you examined the records in the land office at Lansing?

A. No. sir.

Q. Then you mean to say you had no actual knowledge—no one had informed you of the fact?

A. No, sir. In reference to this tax deed that has been offered

in evidence, the deed contains a large number of descriptions of land. I became the purchaser in 1881 of these lands-that is, the original purchase was then. I could not say whether these lands were assessed to our folks on the tax-roll for the year 1888. say because I don't know.

Q. Didn't you see the assessment-roll that year? Didn't the collector come around and ask for this land? Was it assessed to you

the year before?

A. I could not say that.

Q. Has it been assessed to you at all?

A. I think it has, to our firm.

Q. You bought this in the interest of your firm, didn't you?

A. Yes, sir.

Q. Who pays the taxes on this property?

Q. Did you pay the taxes on any other land assessed to your firm in that county?

A. Yes, sir.

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Q. Did you in that township?

A. I think so, yes, sir. I didn't tell the treasurer to return this land in 1888 or 1889. I don't know whether I did or not.

EXHIBIT 163.

6818.

Certificate No. 32-34-37, section 67, act No. 195, 1889. 39-40-41.

Deed.

This indenture, made the thirtieth day of July, in the year of our Lord one thousand eight hundred and ninety-two, between George W. Stone, auditor general of the State of Michigan, of the first part, and C. A. Rust, of Saginaw, E. S., of the second part, witnesseth,

That whereas, at a sale made by the treasurer of the county of Clare, in said State of Michigan, at the county-seat thereof, in accordance with the provisions of law, of lands situated in said county, which were returned to the office of said auditor general for delinquent taxes for the year 1888, and which taxes, with the interest and charges thereon, remain unpaid, the said party of the second part did become the purchaser at such sale on the fourth day of May, A. D. 1891, of the following described lands, situated in said county of Clare, to wit:

Southeast quarter of southeast quarter of section twenty, containing forty acres more or less; and northwest quarter of southwest quarter of section twenty-one, containing forty acres more or less; and northwest quarter of southeast quarter of section twenty-two, containing forty acres more or less; and northwest quarter of northwest quarter of section twenty-eight, containing forty acres more

or less; and north half of southwest quarter of section twentynine, containing eighty acres more or less; and north half of northeast quarter of section thirty-five, containing eighty acres more or less; all in town eighteen north, range three west.

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And whereas, the said party of the second part has paid the amount of the purchase-money for the same, to wit, the sum of three hundred and fifty dollars and twenty-four cents, to the treasurer of said county, and obtained his certificates of said purchase according to law; and whereas, the said party of the second part has presented and surrendered to the said auditor general the certificates of purchase aforesaid:

Now, therefore, this indenture witnesseth, that the said Geo. W. Stone, auditor general of the said State of Michigan, in the name of the people of said State and by virtue of the authority vested in him by the laws thereof, in consideration of the premises and of the sum aforesaid paid by the said party of the second part as above mentioned, the receipt whereof is hereby confessed, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns forever, the premises above described, with all and singular the rights, privileges, hereditaments and appurtenances to the same belonging or in anywise appertaining.

To have and to hold the same unto the said party of the second part, his heirs and assigns forever: *Provided*, however, that the title hereby conveyed is subject to all taxes assessed and levied on the above-described premises, subsequent to the taxes for which said

premises were sold as aforesaid.

In testimony whereof, the said Geo. W. Stone, auditor general as aforesaid, has hereunto set his hand and seal the day and year first above written.

GEO. W. STONE, [L. s.] Auditor General of the State of Michigan.

332 WILLIAM L. Webber, recalled for further cross-examination:

The sales that I spoke of were made at the register's office at Ionia, as I remember. I really can't tell you exactly, but I should say that was some thirty-odd miles, perhaps, from the capital of Michigan. I have traveled over it a good many times, but I don't know as I ever took note of the distance. I should think between thirty and forty miles.

Redirect examination:

Q. As a matter of fact, didn't that sale of the quantity of land, and the proceedings that were taken in relation to it attract a good deal of public attention through the State?

Objected to as irrelevant and immaterial Overruled. Exception for the plaintiffs.

A. It did throughout our section of the State and throughout other sections of the State where they were interested in the lands, so far as I know.

Recross-examination:

Q. How far do you know?

A. I know there were a good many there from Detroit, a good many from Lansing and Saginaw, men from Grand Rapids, and perhaps from Big Rapids.

CHARLES A. RUST, recalled for the defendants, testified:

Q. I omitted to ask a question on direct. State whether or not in 1888 these lands in question were wild and unoccupied.

A. Yes, sir. Have always been so, and remain so yet.

Defendants rest.

Plaintiff's counsel then moved the court to strike out and reject all the documentary evidence introduced on the part and behalf of the defendants relating to fraudulent and defective and errosass neous surveys of the townships of Michigan prior to act of Congress Sept. 25th, 1850, for the reason that such evidence is irrelevant and immaterial to the issue in this suit.

COURT: I will deny that motion, and give you an exception.

He also moved to strike out and reject the documentary evidence introduced on the part of the defendant-relative to resurveys in Michigan after the 28th of September, 1850, for the reason that such evidence is irrelevant and immaterial to the issue in this suit.

COURT: I will deny that motion, and give you an exception.

He also moved to strike out and reject all the documentary evidence introduced by the defendants relative to the resurveys in Michigan after the approval of the swamp-land list by the Secretary of the Interior, and the transmission of such list and plat to the governor of the State of Michigan, called Ionia list No. 1, for the reason that such evidence is immaterial and irrelevant to the issue.

COURT: I will deny that motion, and give you an exception.

He also moved to strike out and reject supplemental list of swamp lands made by the surveyor general, filed in the office of the Commissioner of the General Land Office at Washington, dated May 12th, 1858, and the map of the resurvey filed in the office of the register and receiver June 3d, 1858, for the reason that such evidence is irrelevant and immaterial to the issue.

COURT: I will also deny that, and give you an exception.

And thereupon the plaintiff, to further maintain the issue on its part, and in rebuttal, read from the reports of the Commissioner of the General Land Office for the years 1855 to 1891 inclusive, certain tabulated statements, showing the amount of lands selected, approved and patented to the State of Michigan ending in each year, under the act of Congress approved September 28, 1856 which for convenience is tabulated as

Ехнівіт 165.

	Selected.	Approved.	Patented.
Report for 1855	7,273,724.72	5,465,232.41	2,013,080.9
Report for 1856	7,273,724.72	5,465,232.41	4,455,053.2
Report for 1857	7,273,724.72	5,465,232.41	4,985,588.4
Report for 1858	7,273,724.72	5,465,232.41	4,985,588.4
Report for 1859	7,273,724.72	5,465,232.41	5,059,041.5
Report for 1860	7,273,724.72	5,465,232.41	5,059,041.5
Report for 1861	7,273,724.72	5,465,542.74	5,059,041.5
Report for 1862	7,273,724.72	5,465,765.34	5,311,807.3
Report for 1863	7,273,724.72	5,482,832.40	5,592,901.5
Report for 1864	7,273,724.72	4,482,832.40	5,592,901.5
Report for 1865	7,273,724.72	5,554,164.80	5,660,315.7
Report for 1866	7,273,724.72	5,691,518.66	5,685,741.4
Report for 1867	7,273,724.72	5,691,518.66	5,816,964.89
Report for 1868	7,273,724.72	5,691,598.66	5,817,084.89
Report for 1869	7,273,724.72	5,691,758,66	5,817,804.89
Report for 1870	7,273,724.72	5,691,878.66	5,836.788.82
Report for 1871	7,273,724.72	5,691,958.66	5,836,948.82
Report for 1872	7,273,724.72	5,693,506.53	5,837,068.82
Report for 1873	7,273,724.72	5,693,506.53	5,838,616.69
Report for 1874	7,273,724.72	5,713,370.14	5,838,775.86
Report for 1875	7,273,724.72	5,714,805.38	5,838,775.86
Report for 1876	7,273,724.72	5,720,280.22	5,864,669.55
Report for 1877	7,273,724.72	5,720,356.63	5,657,697.19
Report for 1878	7,273,724.72	5,720,996.63	5,657,817.19
Report for 1879	7,273,724.72	5,720,996,63	5,657,817.19
Report for 1880	7,273,804.72	5,721,116.63	5,659,217.14
Report for 1881	7,273,844.72	5,721,894.73	5,659,377.14
Report for 1882	7,273,844.72	5,722,174.73	5,659,817.99
335		-,,	0,000,011.00
Report for 1883	7,273,844.72	5,722,333.68	5,660,995.04
Report for 1884	7,273,844.72	5,722,373.68	5,660,995.04
Report for 1885	7,287,863.82	5,727,384.93	5,665,886.66
Report for 1886	7.293.159.28	5,728,585.65	5,665,886.66
Report for 1887	7,293,159.28	5,728,842.91	
Report for 1888	7,293,159.28	5,728,922.91	5,667,647.38
Report for 1889	7,293,159.28	5,728,922.91	5,667,304.64 5,667,304.64
Report for 1890	7.293,159.28	5,728,922.91	
Report for 1891	7,293,159.28	5,729,335.50	5,667,304.64
	.,-00,100.20	0,120,000.00	5,668,224.01

Plaintiff's counsel then read from the reports of the Commissioner of the General Land Office and Secretary of the Interior for 1877, 1878, and 1882, as

Ехнівіт 166.

Com. G. L. O., Page 12, 1877:

The act of September 20, 1850, has been held by the Supreme Court to have been a present grant. The act provides that it shall be the duty of the Secretary of the Interior to make accurate lists and plats of the same, and transmit them to the governors of States,

and at their request to issue patents therefor.

The provisions of the law have not been fully carried out, nor have the grants to the several States been adjusted. Lapse of time makes the adjustment more difficult. Many States are demanding their rights under the act, and, at the present rate of settlement, vears must elapse before the swamp and indemnity lands can be ascertained.

Com. G. L. O .. Page 26, 1878:

Survey of townships 18 and 19 north, range 1 west, Michigan.

Under authority of act of Congress approved February 16, 1877 (19 Stat., p. 231), townships 18 and 19 north, of range 1 west, 336 Michigan, were surveyed by T. Gale Merrill, under contract dated March 31, 1877, entered into with this office, there being no surveyor general in Michigan, and returns thereof were made July 17, 1877, and being found correct, were approved August 3, 1877.

In many cases the corners of the original survey, formerly reported as fraudulent, were found, and under instructions from this office the surveyor adopted such corners where found in their proper

places.

The expense of the survey was \$2,136.22, which was paid from the appropriation of \$2,500 made for the purpose by said act of February 16, 1877.

Com. G. L. O., Page 9, 1882:

Swamp Lands.

The unadjusted claims now pending amount to 14,000,000 acres, and there is no diminution in the number of claims annually filed.

The progress of settlement in the public-land States, and the rapid absorption of the public lands of the United States, have led to increased attention by investors and settlers to lands claimed under the swamp-land grant, resulting in a pressing demand upon this office for the more rapid adjustment of these claims.

The work of the division charged with this service is several

years in arrears.

337 And then read from the reports of the commissioner of State land office for the years 1853, 1854, 1871, 1876, 1882, 1886, as

Ехнівіт 167.

Report for the Year Ending November 30th, 1853.

Porter Kibbee, commissioner.

Page 6:

"Swamp lands. We have received lists and diagrams of these lands for the Detroit and Kalamazoo districts, amounting to 414,434.24 acres.

"The lists were received about four months since, and believing it a favorable time to offer them I have given notice of the sale, a part of which are to be offered at Port Huron and the balance at this office.

"Act No. 187, of 1851, provides that 'the commissioner of the State land office shall have the control and supervision of said lands, and of the sale thereof, and shall, as soon as the title vests in the State, cause the same to be sold at public auction at such times and in such quantities as he may think proper."

Report for the Year Ending November 30th, 1854.

Porter Kibbee, commissioner.

Page 6:

"Swamp lands. We have received lists of these amounting to 5,879,811.21 acres. There have been sold during the year 142,933.09 acres."

He then refers to his last annual report, and to the act 187, 1851,

and says:

"The question was suggested whether, on receiving lists and diagrams, the title had become vested in the State. The first section of the act of Congress of the 28th of September, 1850 (vol. 9, U. S. Stat. at Large, 518) declared that 'the whole of those swamp and overflowed lands, made unfit thereby for cultivation, which

shall remain unsold at the passage of this act, shall be, and the same are hereby, granted to said State.' The second section required the Secretary of the Interior to make out an accurate list and plats of the lands and to transmit them to the governor, and at the request of the governor to cause a patent to be issued, and on that patent the title should vest in the State, subject to the disposal of the legislature thereof. Upon this subject and other incidental questions the opinion of the attorney general was desired, and upon repeated occasions an interview with him was sought, at much personal inconvenience, but without success. Failing to obtain an interview with him, and to get his advice, owing probably to his absence from the State, I consulted the governor and the other State officers, and able attorneys in the State, and particularly the ex-attorney general, and I received from them, without exception,



the unanimous opinion that, by the terms of the first section of the act of Congress, the title had become completely vested in the State, and that upon obtaining the lists and plats, so as to know the particular description of the lands which the department at Washington had selected under the act, it was the duty of the commissioner to proceed and to name a time and determine the quantity that should be offered for sale, and to hold the sale at the earliest reasonable and convenient opportunity. This was understood to be the construction put upon it by the department at Washington, and this view was corroborated by the construction put upon the act by the State of Mississippi, as well as other of the Southern land States which were made, with this State, the recipients of the act. I therefore proceeded to offer the lands for sale in those two land districts in the month of December of last year."

Doc. No. 7,

Pages 8 & 9, 1854.

I was restrained from proceeding to sell the lands by an injunction issued upon the order of the Hon. S. T. Douglass, judge of the circuit court for the county of Wayne, upon an information filed on the day previous (the 17th of July) by the Hon. Wm.

Hale, attorney general, and the sales were postponed to the 12th day of September.

The principal ground assumed in the information by the attorney general was, that patents for these lands, which were to be offered for sale, had not been issued at the time of giving the notice, and that patents for all of them had not been issued pursuant to the act of Congress at the time of filing the information, and that, until the patents issued, no title vested in the State. This question was deemed of sufficient importance to the people of the State to justify the expense of obtaining the deliberate judicial opinion of the distinguished judge who granted the order for an injunction.

A motion was therefore made upon the answer of the defendant to dissolve the injunction. It was not considered necessary to make a critical examination of the patents to ascertain, by reference to the particular descriptions, whether the patents received by the governor actually embraced every parcel of the land offered for sale or not; and it was supposed that it would suffice to raise the question, to make the general statement in answer to the allegations contained in the information, that the commissioner, so far as he was able to say from information and belief, believed that patents for most, if not all, of the lands were duly received prior to the day fixed for the sale. Upon full argument and deliberate consideration, the court sustained the construction put upon the act of Congress by the attorney general, and held that the commissioner had no authority to sell any of the lands except those for which the patents had been issued previous to the giving the notice for the sale of them; and that those lands, if any, for which the patents had been received subsequent to the giving of the notice of sale, could not be sold without proceeding to advertise anew.

340 Report for the Year Ending September 30th, 1871.

Charles A. Edmonds, commissioner.

Pages 8 and 9 and post, discusses swamp lands. Says on page 8:
"The whole amount of land patented to the State under this grant has been variously reported at different times. The report from this office for the 1868 gave the amount patented as 5.851,984.57 acres, showing a discrepancy in the two reports of 57,675.97 acres; and the last annual report of the Commissioner of the General Land Office gives the total patented to the State as 5,836,788.82 acres, including indemnity lands to the amount of 18,823.93 acres."

Page 14 speaks of sundry irregularities in the office upon taking

possession Jan. 3d, 1871, and says, among other things:

"I have in course of preparation a complete abstract of all the swamp lands contained in the original grant to the State, compiled by townships, and showing at a glance the whole history of each description of land."

Report for 1876.

L. A. Clapp, commissioner.

Pages 7 and 8 discusses the adjustment of the swamp-land grant, and refers to the report of the Commissioner of the G. L. O. for the fiscal year ending June 30, 1875, in which it is said the following facts appear:

"A subsequent act of Congress was approved March 3, 1857, providing that in cases where the United States had sold said swamp lands for cash, that the purchase-money should be paid over to the State, and that when it made sales on land-warrant locations

or scrip, that the State should be authorized to locate a like amount as indemnity therefor. From an investigation recently made, I find that a large quantity of our swamp land has been disposed of by the General Government, and that thus far indemnity land amounting to but 18,823.93 acres has been obtained by the State on account of land-warrant locations, and not a dollar has been received by the State on account of cash sales. I am convinced that a large amount in cash and indemnity land is now due to the State, and respectfully recommend that the legislature provide by proper enactment for a complete adjustment of said swampland grant."

Report for 1882.

James M. Neasmith, commissioner.

Page 7 says:

"The lists of swamp lands claimed by the State, but which have never been patented to the State, have been completed, and the work of adjusting the grant is well under way. It already appears that there is a large amount justly due the State, both in lands and in money. The matter should be pressed to a settlement, and I trust the coming year will show great progress in that direction."

Page 8:

"The work of the Commissioner of Immigration, in directing the attention of people of other States to the advantages of the State of Michigan, has added very materially to the business of this department. Many sales to settlers who had first learned of the lands of this State from the valuable pamphlet, "Michigan and its Resources," have come to my personal knowledge. The inquiries for State land have been largely increased by its circulation, and in our correspondence its influence has been plainly seen and felt."

342 Com. S. L. O. Page 8, 1882:

Abstracts of State Lands.

In the year 1872 the work of preparing books of abstracts of State land was entered upon, and continued to the time of the commencing of my administration. Much time and money was expended on this work, but I found it to be of no value, as the source of the title of the State had not been noted, and only a portion of the lands of the State were entered upon these books. The work was therefore of no use, and was abandoned. The work has been resumed, but a different system has been adopted. Complete lists of all lands at any time owned by the State have been prepared, and from these lists new abstracts have been prepared, which will show a complete history of all transactions concerning the State lands up to the time they are finally disposed of by the State. One clerk has been detailed for this work, and it has occupied his time during my entire term of office.

Report for 1886.

Minor S. Newell, commissioner.

Page 6: "The State has received from the Gener in cash, and certificates entitling the State of land, being the first installment paid the Government since the passes of the "Lists covering the greater aggregate over 1,000,000 acres a vigorous prosecution will result in its speed."	ate for h	403.37 acres sold by in the land a
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Plaintiff's counsel then read from the messages of Governors Jerome and Alger to the legislature of Michigan as

Ехнівіт 168.

JOINT DOCUMENTS.

Vol. 1, 1882, page 12.

SPECIAL MESSAGE

OF

DAVID H. JEROME,

Governor of the State of Michigan,

TO THE

LEGISLATURE,

In Extra Session, February 23, 1882.

Unpatented Swamp Lands.

In the list of swamp lands granted to the State by the United States there were 1,714,587 acres in excess of the amount subsequently patented. The commissioner of the State land office has caused lists of these unpatented lands to be prepared for use in settling with the Government. Arrangements are partly perfected to adjust this claim on behalf of the State. It is expected that the Government will convey to the State what lands it still has applicable to the grants, and settle for the deficiency found to be due in money.

The preparation of these lists covered four years of continuous labor, and success in securing the rights claimed will depend upon the fidelity and energy with which the work is prosecuted at Washington. Reference is made to the report of the commissioner.

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JOINT DOCUMENTS.

Vol. I, 1886, page 15.

MESSAGE

OF

RUSSELL A. ALGER,

Retiring Governor,

TO THE

MICHIGAN LEGISLATURE,

January 6, 1887.

Swamp-land Indemnity.

By act of Congress approved September 28, 1850, all the swamp and overflowed land- within the State were granted to the State.



The grant was accepted, and the plats and field-notes of the Government surveys were accepted as the basis for the adjustment of the grant. Under this arrangement 7.373,804.72 acres were reported by the Secretary of the Interior as coming within the grant, but of this amount only 5,659,217.14 acres have been patented to

the State, leaving a balance due the State of 1,714,587.68.

Through errors in the local offices, or by design, the greater part of this deficiency has been disposed of by the Government. The claim for the deficiency has been prepared by the State land department and presented to the Interior Department. It has in effect been allowed, and the first installment of indemnity for the lands sold received and covered into the treasury. Some portion of the claim will no doubt be rejected, but it can be reasonably expected that the State will receive indemnity for the greater part of it. It is reasonable to hope that the State will receive several hundred thousand dollars from this source. This is the result of vigorous work of the land department of this State of late.

And then read

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Ехнівіт 169.

Detroit, Michigan, September 2d, 1856.

eander Chapman, Esq., sur. gen'l, Detroit, Michigan.

Six: By letter of the 25th ulto, from the General Land Office, ou are advised of the appropriation of \$9,750 for the resurveying and correcting of erroneous surveys in the lower peninsula of Michigan at a rate not exceeding \$6 per mile.

This appropriation is applicable to the resurveys & corrections of the following townships and parts of townships referred to in your stimate N, page 60 of last annual report, and in statement 1, page 7, of that report, viz., townships 28, 29 & 30 N, of range-1 to 6 V, both inclusive, townships 31 & 32 N, of ranges 6 to 9 W de-

In regard to field-work already contracted for under former appropriations, and for which the deputies have not yet reported, you ill be pleased to require, by a special call on them, to make their turns during the present fall in the shortest time possible constent with the correct executions of their contracts not only for

the resurveys, but for the original field-work in the survey ordered of interior islands.

Respectfully, &c., &c.,

JOSEPH S. WILSON, Of the General Land Office.

346 And

Ехнівіт 170.

Surveyor General's Office, Detroit, Dec. 9, 1856.

SIR: Acting in accordance with your instructions of the 2nd of September last, I contracted to A. P. Brewer, Ts. 30 N, in Rs. 1, 2, 3 & 4 W; to Harvey Mellen, T. 29 N, Rs. 1, 2, 3 & 4 W; to Walter Warner, Ts. 28 N, Rs. 1, 2, 3 & 4 W; to Geo. H. Cannon, Ts. 18 N, Rs. 2, 3, 4 & 5 W; & to Levi H. Cannon, Ts. 19 N, Rs. 2 & 3 W. No time was lost after the receipt of your instructions as above in communicating with all unemployed deputies to whom it was proper to offer work. Contracts were entered into at the earliest day practicable with all who were willing to undertake a district under the restrictions which I was particularly directed to observe in the making out of said contracts.

Two of the deputies, Mr. Warner and Mr. Mellen, have returned from the field leaving their districts unfinished, and have reported to this office that every effort has been made by them to complete their contracts as required. Winter came upon them earlier than they anticipated. A heavy snow which fell in November to the depth of one and one-half feet, rendered further prosecution of their work impossible. These gentlemen ask that I shall consider the circumstances in which they are placed, and grant to them such an extension of time as will admit of their completing their contracts after they shall be able to reach the field in the spring.

I have no doubt as to the propriety of granting their request, but do not feel authorized to do so without first obtaining your sanction of such a course. I have, therefore, respectfully to request your instructions in relation to the matter.

It is supposed that Mr. Brewer has completed his district, as his progress has not been so obstructed by defective township lines as has been the case with Messrs. Mellen and Warner.

I have heard that the Messrs. Cannon have just completed their districts, which lay in a lower latitude, and consequently have not been so deeply covered with snow.

Very respectfully, your obed't serv ...

LEANDER CHAPMAN.

Surveyor General.

Honbl. Thos. A. Hendricks, Com. Gen'l Land Office, Washington.

And then read

Ехнівіт 171.

GENERAL LAND OFFICE, Jan'ry 2nd, 1857.

Leander Chapman, surveyor general, Detroit, Michigan.

SIR: Your letter of the 9th ultimo has been duly received. It informs this office that in pursuance of its instructions of the 2nd of September last, you have contracted with the deputies therein named for the resurvey of the townships enumerated; that you made contracts with all who were willing to undertake the resurveys under the restrictions mentioned in the aforesaid instructions; that two deputies, Messrs. Warner & Mellen, were compelled, in November last, to abandon their field-work in consequence of an earlier winter and heavy snow than was anticipated, thereby precluding the prosecution of their work to completion; and, finally, that those deputies asked for an extension of their contract time, and that to enable you to comply with their request under the circumstances, you call on this office for instructions authorizing you to grant the same.

In reply I have to say that, in consideration of the causes which curtailed the surveying season in Michigan and postponed the completion of the field-work of Messrs. Warner & Mellen to a period beyond that stipulated in their respective contracts, you are hereby

authorized to grant them the extension of time until the 1st
348 of May next, with the express understanding that this indulgence will be the last; that the field-work under all contracts must be completed in time to enable you to pass upon it, to
have it platted, and the original office work thereof, with the
necessary transcripts executed and returned both to this office and
those of the local land offices all complete, before the first day of
July next; and, finally, that the original papers constituting the
archives of your office be made ready for delivery of the same to

the authorities of the State of Michigan by the 30th Sept. next.

The department having determined that the surveying service in Michigan shall be closed by the 30th June next, you are required to take measures accordingly with the view to bringing about the desired consummation of the affairs in your office by the time fixed as aforesaid. It is presumed, by detailing the present force of your office to the work as suggested, it can be readily accomplished; but should the ordinary means be inadequate to complete the amount of office work in that time with the regular force, you are requested to state what additional clerical force will be needed, together with an estimate of expenses therefor, to enable you to perform the work. The force in the office should be directed, first, to the completion of the plats and the necessary transcripts thereof; also of the transcripts of field-notes. The records may be laid over to the last, for this, in fact, could be made at any time hereafter.

Should any failings transpire on the part of your deputies calculated to require a longer time for the winding up of your office than stated above you will grant no further extension of time stipulated in their respective contracts, as this question will not be entertained

by the department, and consequently it will become your duty to cancel such contracts.

You are requested to respond to the foregoing at your earliest convenience.

Respectfully, &c.,

THOS. A. HENDRICKS, Commissioner

349 And

Ехнівіт 172.

SURVEYOR GENERAL'S OFFICE, DETROIT, January 17, 1857.

SIR: Your letter of the 2nd inst., in reply to my application for instructions in reference to unfinished contracts, containing also instructions pertaining to the future action of this office, was received on the 9th. I had prepared a letter in reply, with such statements as seemed to be called for in your letter, above referred to, intending to send it by today's mail. I have, however, on reflection, thought that it would be, under all the circumstances, advisable, and as there appears to be some unavoidable difficulties in regard to the proposed execution of both the office and field-work under my charge, to have this whole subject laid before you personally. I would, therefore, recommend that Mr. Thaver, my chief clerk, who was prevented by unavoidable absence from the city from seeing Mr. Wilson when here in September last, be allowed to proceed to Washington with such papers and data as will enable him to place all the facts before you, and give such explanations as seems to be required, and which it would be very difficult to do by correspondence, as there are many points embraced in your letter requiring immediate action which might, by a personal interview, having all necessary facts and data at hand, be better understood mutually.

I am persuaded, moreover, that the interests of the Government

would be greatly promoted by this course.

I beg leave to say that it is my earnest wish to accomplish all the objects desired by the department, and there shall be no lack on my part to carry out all these to the extent of my power and as speedily as possible.

Should the suggestion made meet your approbation, I will thank you to advise me by telegraph, and I will give the proper papers to Mr. Thayer immediately, with instruction to proceed at once to Washington and report to you.

I am, respectfully, your ob't servant.

LEANDER CHAPMAN,

Surveyor General.

Hon. Thomas A. Hendricks, Com'r Gen'l Land Office, Washington.

Plaintiff's counsel then read

Ехнівіт 173.

GENERAL LAND OFFICE, February 3d, 1857.

Leander Chapman, Esq., surveyor general, Detroit, Mich.

Six: I have received your letter of the 17th January last, acknowledging the reception of a letter from this office of the 2d of the same month, respecting unfinished contracts, and also instructions of January 9th pertaining to the future action of your office.

In reference to your proposition to send Mr. Thayer, your chief clerk, to Washington for the purpose mentioned by you, I beg leave to state that I prefer your communications may be dispatched by mail in the usual way on any matter on which you may desire advice or further instructions, and in this view Mr. Thayer's personal visit will not be necessary.

In the meanwhile, you will proceed to carry out the instructions contained in the letters of this office of the 2nd & 9th January last

in the usual and ordinary course by correspondence.

Respectfully, &c.,

THOS. A. HENDRICKS,

Commissioner.

351 And then read

Ехнівіт 174.

Surveyor General's Office, Detroit, February 11th, 1857.

Six: I have the honor to acknowledge the receipt of your communications of the 3rd inst. in reply to my letter of the 17th ult., and in accordance with your directions I shall proceed, as far as practicable at this time, to comply with requirements of your letter of 2nd of Jan'y, and to lay before you in as brief a manner as the nature of those instructions will permit, some of the difficulties that will render it impracticable to carry them into effect in the manner

and within the time required.

The authority given me to extend the time for the completion of the contracts of Messrs. Mellen and Warner is of no practical use, inasmuch as these deputies cannot again reach their districts before the 1st of May, the time named in your letter as being the utmost limit that can be allowed them in which to complete the resurveys embraced in their contracts. It appears reasonable that these deputies should either be released from the completion of their districts or be allowed sufficient time in which to do the work required of them. This will also apply to other uncompleted contracts and to work yet to be contracted. The execution of work in the field does not depend more upon the skill and energy of the surveyor than upon the locality and character of the work, or the season of the year in which it is expected to be executed. All deputies that have undertaken work in this district are required by their contracts and instructions to do it in a specified manner. The time necessarily

required by them to do such work depends, as stated, very mucupon circumstances over which they have no control. Fixing period, therefore, without any reference to such circumstance

within which their work is to be completed, is manifestly unjust, and cannot produce the object desired, because if the time named is too short, an absolute impossibility is required I beg leave to suggest that in my oninion such as

I beg leave to suggest that in my opinion such a course may lead deputies to do their work in a hurried and careless manner, a too common fault, and one that I have labored much to obviate. The pecuniary interest of a surveyor who undertakes the public survey under contract is such that he will make every effort possible, ofter endangering the rejection of his work, to complete a contract within the shortest practicable time. In a majority of instances where sur vevs have been suspended for defects or for being made contrary to instructions, it may be attributed to the fact that the deputy has failed to devote the necessary time to insure proper work. Such I have found to be the case with Mr. Warner and Mr. Brewer. I have just completed an examination of the field-notes returned by Mr. Warner, and I find them so defective and so much at fault that they must be retaken in the field. Mr. Brewer completed his district within the time required, but I am not able to approve of the notes of a single township, and it will be necessary for him, or some one for him, to return to the field and make corrections. To complete his work within the required time, he violated his instructions by employing a second party. Mr. Brewer has returned his notes. In two of the townships some of the lines have been run by a man who is not a deputy of this office, and of whose capacity I have no knowledge. To two of the townships he had appended the required oath: to the two done in violation of his instructions he has not made the usual oath, and asks that he be allowed to vary it to suit the facts, and that his notes then be accepted, he making any corrections found to be necessary. Excepting the meanders, his notes indicate that the work has been properly done. I have to ask your instructions as to the manner of disposing of the case of Mr. Brewer.

Notes of the resurvey of a district near Thunder bay, contracted to Josiah Knauer, embracing in all ten townships and fractional townships, have just been examined and rejected. Cor-

rections are necessary before the work can be approved. I deem it my duty to state that to complete in a proper manner the remaining field-work in this State will require at least all of the spring and summer months of the present year. Nothing whatever can be done in the field before April, and much of the work cannot be commenced before the 1st of May. If it is desired that I shall furnish a statement of the unfinished field-work, giving its character, locality, how it must be given out, with as close an estimate as practicable of the time required to complete each district, I can readily do so.

By your instructions, I am required to have not only all of the field-works completed before the 1st day of July next, but, in addition thereto, to have all the comm'rs' & registers' plats made, notes examined, transcribed, &c. The statement made relative to the

field-work, if correct, will render this impossible. I am directed to have all the papers constituting the archives of the office in readiness to deliver to the authorities of the State of Michigan by the

30th day of September next.

It is stated that the present force of this office is supposed to be sufficient to readily accomplish this work, but I am requested, if the force is inadequate, to state what additional clerical aid will be required, and make an estimate of the expense of the increased force. A close and correct estimate of the number of cierks necessary, and the additional means that will be required to bring the work in this office to a close at the time proposed, cannot be made; time has, and will continue to prove the correctness of this statement. Only approximate estimates can be given.

I submit the following as being as nearly correct as such an esti-

mate can be made:

Supposing that the whole number of additional clerks to be employed should commence their labor on the 1st day of March next, and that each clerk fully understands the work that may be assigned to him, so that he will lose no time in becoming acquainted

with the manner and form in which his work is to be executed, twenty additional clerks will be required, and a fund exclusive of what is now available of at least \$10,000 will be wanted to pay them. New office furniture will be required for the

use of the increased force, which will probably cost \$200.

The difficulty of advantageously engaging such a number of clerks upon the unfinished office work, taking into consideration its peculiar character, condition and amount at this time, is a feature that should be considered, and against which many sound objections might be offered. It is proper that I should state that there is much work to be done that can only be properly and usefully executed by clerks who are perfectly familiar with the public and private surveys, who fully understand and are well acquainted with the great variety of field-notes and papers in the office. No new clerk, without previous experience, can acquire this information in a few days or months. A clerk may be engaged in the office for years and be incompetent to perform such labor, because his whole attention and observation may have been confined to a single branch of business. There is work to be done which, if done correctly and in a manner to be useful, cannot be performed by any new clerk, and must necessarily be confined to not more than two or three of the present force. This class of work is peculiar to and wholly connected with the finishing or closing up of the office business.

In conclusion, I beg leave to say that I desire to faithfully carry out, so far as it may be in my power to do so, such instructions as

the department may deem it expedient to give me.

I am, very respectfully, your ob't serv't,

LEANDER CHAPMAN,

Surveyor General.

Hon. Thomas A. Hendricks, Comm'r Gen'l Land Office, Washington. 33 - 331

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Ехнівіт 175.

GENERAL LAND OFFICE, February 24, 1857.

Leander Chapman, surveyor general, Detroit, Michigan.

SIR: Your letter of the 11th inst., acknowledging the receipt of

mine of the 3d of the same month, has been received.

You represent that the time for the completion of the contracts of Messrs. Miller and Warner, as granted by this office on the 2d ulto., to the 1st day of May next, will be of no practicable use because they cannot reach their district before that time; and in view of the limitation of time in which the department had prescribed for the return of field-work, viz., 30th June next, and the transfer of the archives of your office to the State of Michigan, viz., 30th September next, you suggest that it would be reasonable either to release the deputies from the completion of their contracts or to allow sufficient time in which to do the work required of them, and that this time would depend on circumstances which will equally apply to other unfinished contracts & to work yet to be contracted. You state that the examination of Mr. Warner's field-notes disclose errors requiring his return to the field for the purpose of retaking the same. Mr. Brewer's work proving defective in every township, you say it will be necessary for him to return to the field to correct it; and inasmuch as he returned field-notes of two townships surveved in violation of his contract by employing a man who was not a deputy, and consequently unable to swear to the work in person, you ask for instructions as to the manner of disposing of Josiah Knauer's contract near Thunder bay, embracing ten townships, you say, upon examination was rejected by you, and corrections are necessary before the same are approved. You add

that "to complete in a proper manner the remaining field-work in the State will require all the spring and summer mouths of the present year." Finally, you report to this effect: That an additional clerical force of persons who are not familiar with the business would complicate the difficulty, as you could not procure a sufficient number of competent clerks (at least 20) in order to carry out the requirements of this office of the 2nd January last, and would involve an additional expenditure to accommodate the

increased clerical force.

In reply to the foregoing difficulties I have to say as follows:

The tenor of the instructions of the 2nd ultimo for the winding up of the surveying service in Michigan is adhered to by this office, with modification of the time within which the same was to have been accomplished, in order to suit the circumstances and to afford sufficient time to your deputies to return correct work under their respective contracts. This modification is as follows:

The time allowed to complete the work described in my instructions of the 2d ulto., before the first of July next, is hereby extended to the 30th September next, and the time for the delivery to the State authorities the original papers constituting the archives of your office is hereby extended to the 31st December next. And in consequence of inability on your part to secure competent deputies for the correct performance of the work, as is obviously manifested in your communication to which this is the reply, and in view of the recurrence of the difficulties during the period just allowed for the completion of the field operations, you are required to enter into no further contracts after the receipt hereof, but to confine your energies to the work already commenced & contracted for, and cause the same to be accomplished within the time now allowed.

Presuming that you are familiar with the instructions relating to the duties and requirements of a surveyor general, I do not deem it necessary to further instruct you in the case of Mr. Brewer's

difficulty growing out of the returns of work under his contract in violation of its terms, and consequently leave the solution of the question to yourself as the person responsible for your deputies.

Respectfully, &c., THOS. A. HENDRICKS, Comm.

Plaintiff's counsel then offered to read in evidence the files and records in the case of the *United States vs. Henry Nicholson et al.*, being No. 2202 of the United States circuit court for the eastern district of Michigan.

To which defendants' counsel objected as being immaterial and irrelevant, and the objection being sustained by the court, plaintiff's counsel excepted. The matter offered is as follows, so far as it re-

lates to this issue:

Ехнівіт 175 А.

In the Circuit Court of the United States for the Eastern District of Michigan.

THE UNITED STATES OF AMERICA
vs.
HENRY NICHOLSON, DAVID H. ROWLAND, and J. SSE CRAM.

Calendar Entries.

1849.

Nov. 12. Præcipe filed. Summons issued ret'ble 1st Monday Dec.

"14. Summons returned. Served. Fees, \$8.40. Beardsly,
d'y M.

Dec. 3. Narr, filed. 4. Appearance of defendant Rowland entered by Van Dyke & Emmons, his att'y-. Rule to plead entered.

" 24 Demand of over filed.

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1850.

Jan. 3. Demurrer to narr. filed by def't Rowland.

May 23. Amended narr. filed by U. S. attorney. Rule to plead entered.

Nov. 25. Plea filed.

" " Jury trial. Verdict in favor of defendants.

Amended Narr.

Circuit Court of the United States for the Seventh Circuit and District of Michigan.

On the third day of December, in the year of our Lord one thousand eight hundred and forty-nine.

DISTRICT OF MICHIGAN, 88:

The United States of America, plaintiffs in this suit, by George C. Bates, their attorney, complain of David H. Rowland, impleaded with Henry Nicholson and Jesse Cram, defendants in this suit. The said Henry Nicholson, David H. Rowland and Jesse Cram having been duly summoned to answer to the plaintiffs of a plea that the said defendants render to the said plaintiffs the sum of three thousand dollars, which they owe to and unjustly detain from them.

For that whereas, the said defendant Henry Nicholson heretofore, to wit, on the twentieth day of July, in the year of our Lord one thousand eight hundred and thirty-eight, made an agreement with Ezekiel S. Haines, surveyor general of the United States for the States of Ohio, Indiana and Michigan, who was acting for and in behalf of The United States, the plaintiffs in this suit, which said agreement is substantially as follows:

"Articles of agreement made and agreed upon this 20th day of July, 1838, between Ezekiel S. Haines, surveyor general of the United States for the States of Ohio, Indiana and the Territory of Mich-

igan, acting for and in behalf of the United States of the one part, and Henry Nicholson, a deputy surveyor of the State of Michigan, of the other part, witnesseth, that the said Henry Nicholson, for and in consideration of the conditions, terms, provisions and covenants hereinafter expressed, and according to the true intent and meaning thereof, doth hereby covenant and agree with the said Ezekiel S. Haines, in his capacity aforesaid, that he, the said Henry Nicholson, in his own proper person, with the assistance of such chainmen and axemen and flag-bearers as may be necessary, agreeably with the laws of the United States, and with the general instructions to deputy surveyors and such special instructions as he may receive from the said surveyor general, will faithfully lay out, survey and subdivide into sections the following-described townships of land, viz:

Townships 18, 19 & 20, range 1 west, Townships 18, 19 & 20, range 2 west, Townships 18, 19 & 20, range 3 west,

situate north of the base line and west of the principal meridian, in the State of Michigan, and that he will complete these surveys in the manner aforesaid, and return the true and original field notes thereof to the office of the said surveyor general on or before the 1st day of January next ensuing the date hereof (acts of God excepted), in penalty of forfeiture, and paying to the United States the sum

mentioned in the annexed bond, if default be made in any of the

foregoing conditions.

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And the said Ezekiel S. Haines, in his capacity aforesaid, covenant- and agree- with the said Henry Nicholson, that on the completion of the surveys above named, in manner aforesaid, then shall be paid to the said Henry Nicholson, on account of the United States, as a full compensation for the whole expense of surveying and making due return thereof, two dollars and seventy-five cents per mile, for every mile and part of a mile actually run and marked, random lines and offsets not included: *Provided*, no member of Congress have any part in this contract.

In testimony whereof, the parties to these article of agreement have hereunto set their hands and seals the day and

year first above written.

E. S. HAINES, [L. s.]

Surveyor General.

HENRY NICHOLSON, [L. s.]

Deputy Surveyor.

Signed, sealed and acknowledged before us-

SAM'L WILLIAMS,

As to E. S. Haines' signature.

H. M. PERIN,

As to H. Nicholson's sig."

And also for that the said defendants heretofore, to wit, on the twentieth day of July, in the year of our Lord one thousand eight hundred and thirty-eight, at the city of Detroit, in the district of Michigan aforesaid, by a certain writing obligatory, sealed with their seals, the date whereof is the day and year last aforesaid, acknowledged themselves to be held and firmly bound, jointly and severally, unto the United States, in the sum of three thousand dollars, above demanded to be paid to the said United States, which said writing obligatory was and is subject to a certain condition thereunder written, in the words and figures following, to wit: "The condition of the above obligation is such that if the above bounden Henry Nicholson shall well and truly and faithfully, and according to the laws of the United States and the instructions of the said surveyor general, make and execute the surveys which are required of him to be made by the foregoing contract, and return the fieldnotes of the said surveys to the surveyor general in the manner and within the period named in the said contract, then this obligation to be void, or otherwise it shall remain in full force and virtue," which said bond or writing obligatory was and is attached to the agreement hereinbefore in this declaration particularly set forth and described, and the said condition thereof has express reference to the covenants and agreements to be performed by the said Henry Nicholson, one of the above-named defendants, as a party to said agreement, hereinbefore set forth in the foregoing declaration.

And the said plaintiffs further aver and say that they have fully and faithfully complied with the terms and conditions of the contract above set forth to be performed on their part; that heretofore, to wit, on the eighteenth day of June, in the year of our Lord one thousand eight hundred and thirty-nine, they paid to the said Henry Nicholson the sum of one thousand five hundred and twenty-one dollars and sixty-four cents as a full compensation for the aforesaid surveys in the said contract above set forth to be made by the said defendant Henry Nicholson.

And the said plaintiffs in fact further say that the said Henry Nicholson, deputy surveyor as aforesaid, did not well and truly and faithfully and according to the laws of the United States and the instructions of the surveyor general, make and execute the surveys which were required of him to be made by the aforesaid contract, and did not return the field-notes of the said surveys to the surveyor general in the manner and within the period named in the

said contract, although not prevented by the act of God.

And the said plaintiffs in fact further say that the said Henry Nicholson did not in his own proper person, with the assistance of such chainmen, axemen, and flag-bearers as were necessary agreeably with the laws of the United States, and such general and special instructions as he received from the surveyor general, faithfully lay out, survey, and subdivide into sections the lands and premises particularly set forth and hereinbefore mentioned and described in said contract, nor did he complete the said surveys in the manner aforesaid, nor did he return the true and original field-notes thereof to the office of the said surveyor general on or before the first day of January next ensuing the date of said contract (acts of God excepted).

By reason of which said breaches the said writing obligatory became forfeited, and thereby an action hath accrued to the said plaintiffs, The United States of America, to demand and have of and from the said defendants the said sum of three thousand dol-

lars above demanded.

Yet neither the said Henry Nicholson nor the said defendants David H. Rowland and Jesse Cram, or either of them, though often required so to do, have paid the said penalty above demanded, or any part thereof, but to pay the same have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of the United States of three thousand dollars, and therefore they bring suit, &c.

GEORGE C. BATES, U. S. Attorney.

Filed May 23, 1850.

JNO. WINDER, CTk.

Plea.

e Circuit Court of the United States for the District of Michigan.

AVID H. ROWLAND & HENRY NICHOLSON & JESSE CRAM ads. UNITED STATES OF AMERICA.

No. 2202.

And the said defendants aforesaid, by Van Dyke & Emmons, d his attorneys, to the amended narr. of said plaintiffs, come fend the wrong and injury when, &c., & say that the said supsed writing obligatory is not their deed, and of this they put mself before the country, &c.

VAN DYKE & EMMONS.

Att'ys for D'f'ts.

And under the above plea notice is hereby given, and it is unerstood between the respective attorneys of the respective parties, at the said defendants may on the trial give in evidence as fully if he had fully and formally pleaded the same, as follows, viz: Nil debet, and those things which under plea of nil debet are lmissible. 2. Performance by the principal of the agreement which the writing obligatory is given to secure. 3. If there has been non-performance by the principal & breach of the 13 bond, that there has been full payment and satisfaction made said defendants, and that he has been and is released and disnarged. 4. That the matters and things contracted to be done in by the contract which said writing obligatory was given to secure, ere completed, and that the original field-notes and all things reuired to be returned by said contract were duly returned in due me to the office of the surveyor general, and were duly accepted y the Government and by said surveyor general, and the said rincipal paid off, and said def't notified thereof, whereby said ef't surety as aforesaid became and was and is released and disharged. 5. And that said def't- pleads and will give in evidence ther matters on the trial pertinent in bar to the action.

VAN DYKE & EMMONS,

Att'ys for D'f'ts.

GEO. C. BATES,

U. S. Dis. Att'y.

Filed Nov. 25, 1850.

JNO. WINDER, Clerk.

Verdict.

At a session of the circuit court of the United States for the eventh circuit and district of Michigan, continued and held, puruant to adjournment, at the district court room, on Monday, the wenty fifth day of November, in the year of our Lord one thousand ight hundred and fifty.

Present: Hon. Ross Wilkins, district judge.

THE UNITED STATES OF AMERICA

HENRY NICHOLSON, DAVID H. ROWLAND, and JESSE No. 2202.

Issue being joined in this case, and the parties present by their respective attorneys, hereupon comes a jury, to wit, Louis 364 Baubien James Patchen & talesmen Fliche Tyler Tracks

Baubien, James Patchen, & talesmen Elisha Tyler, Tunis S. Wendell, James S. Patchen, and William Fulford, and by consent of parties, by their attorneys, the said six persons, as jurors, are sworn to try the issue joined, and after hearing the evidence adduced and receiving the charge of the court, say they find in favor of said defendants.

Plaintiff's counsel then offered to read in evidence the files and records in the case of *United States vs. Henry Brevoort et al.*, being No. 2198 of United States circuit court for the eastern district of Michigan.

To which defendants' counsel objected as being immaterial and irrelevant, and the objection being sustained by the court, plaintiff's counsel excepted. The matter offered is as follows, so far as it relates to this issue:

Ехнівіт 175 В.

In the Circuit Court of the United States for the Eastern District of Michigan.

THE UNITED STATES OF AMERICA

HENRY BREVOORT, JR., JAMES H. MULLETT, JOHN MUL. No. 2198.

Calendar Entries.

1849.

Nov. 12. Pracipe filed. Summons issued ret'ble 1st Monday of Dec.

" 13. Summons returned. Served on all but Hodgson. Fees, \$7.90. Wickware, D. M.

28. Appearance of def't Brevoort entered.

Dec. 3. Narr. filed.

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1850.

March 27. Demand of over filed,

May 23. Amended narr. filed. Rule to plead entered.

June 22. Demurrer filed by def't- J. H. Mullett, John Mullett, & John Hodgson.

27. Joinder in demurrer filed by pl'ff.

Sept. 18. Stipulation filed. Demurrer withdrawn and plea of performance filed by def'ts James H. Mullett, John Mullett, & John Hodgson.



Oct. 16. Plea of performance filed by Brevoort.

Nov. 18. Jury trial, 19, 20, 21, 22, & 23. Jury hear evidence and argument.

23. Verdict in favor of defendant-.

Amended Narr.

Circuit Court of the United States for the Seventh Circuit and District of Michigan.

Of the third day of December, in the year of our Lord one thousand eight hundred and forty-nine.

DISTRICT OF MICHIGAN, 88:

is substantially as follows:

The United States of America, plaintiffs in this suit, by George C. Bates, their attorney, complain of Henry Brevoort, Junior, James H. Mullett. John Mullett, and John Hodgson, of the county of Wayne, in the district of Michigan. The said Henry Brevoort, Jr., John Mullett, and James H. Mullett having been duly summoned to answer to the plaintiffs, and the summons returned as to John Hodgson not found, of a plea that the defendants render to the said plaintiffs the sum of nine thousand six hundred dollars, which they owe to and unjustly detain from the said plaintiffs.

For that whereas, the said defendants, Henry Brevoort, Junior, and James II. Mullett heretofore, to wit, on the thirteenth day of December, in the year of our Lord one thousand eight hundred and thirty-nine, made an agreement with Ezekiel S. Haines,

366 surveyor general of the United States for the States of Ohio, Indiana, and Michigan, who was acting for and in behalf of The United States, the plaintiffs in this suit, which said agreement

"Articles of agreement made and agreed upon this 13th day of December, 1839, between Ezekiel S. Haines, surveyor general of the United States for the States of Ohio, Indiana, and Michigan, acting for and in behalf of the United States, of the one part, and Henry Brevoort, Jr., & Jas. H. Mullett, deputy surveyors, of the State of Michigan, of the other part, witnesseth, that the said Brevoort, Jr., & Mullett, for and in consideration of the conditions, terms, provisions, and covenants hereinafter expressed, and according to the true intent and meaning thereof, doth hereby covenant and agree with the said E. S. Haines, in his capacity aforesaid, that they, the said Brevoort, Jr., and Mullett, in their own proper persons, with the assistance of such chainmen and axemen and flag-bearers as may be necessary, agreeably with the laws of the United States, and with the general instructions to the deputy surveyors, and such special instructions as he may receive from the said surveyor general, will faithfully lay out, survey, and subdivide into sections, the following-described townships of land, viz:

Townships 24, 25, 26, 27 N, in range 1 west, of the meridian.
Townships 24, 25, 26, 27 N, in range 2 " "
Townships 25, 26, 27 N, in range 3 " "
Townships 25, 26, 27 N, in range 4 " "
Townships 25, 26, 27 N, in range 5 " "
Townships 24, 25, 26, 27 N, in range 6 " "
Townships 24, 25, 26 N, in range 7 " "

Townships 24, 25, 26 N, in range 7 including the survey of the line between townships 25 & 26 N, in range 7 west, all in the State of Michigan, and that they will complete these surveys in the manner aforesaid, and return the true and original field-notes thereof to the office of the said surveyor general on or before the 15th day of August next ensuing the date

hereof (acts of God excepted), in penalty of forfeiture and paying to the United States the sum mentioned in the annexed bond if default be made in any of the foregoing conditions.

And the said E. S. Haines, in his capacity aforesaid, covenants and agrees with the said Brevoort, Jr., & Mullett, that on the completion of the surveys above named in manner aforesaid, there shall be paid to the said Brevoort, Jr., & Mullett, on account of the United States, as a full compensation for the whole expense of surveying and making due return thereof, two dollars and seventy-five cents per mile for every mile and part of a mile actually run and marked, random lines and offsets not included, and four dollars per mile for the township lines, provided no member of Congress have any part in this contract.

In testimony whereof, the parties to these articles of agreement have hereunto set their hands and seals the day and year first above written.

E. S. HAINES,
Surveyor General.
H. BREVOORT, Jr.,
JAMES H. MULLETT,
Deputy Surveyors.

Signed, sealed, and acknowledged before us-

SAM'L WILLIAMS, As to E. S. Haines. B. F. HALL, As to James H. Mullett & H. Brevoort, Jr."

And also for that the said defendants heretofore, to wit, on the thurteenth day of December, in the year of our Lord one thousand eight hundred and thirty-nine, in the county of Wayne, in the district of Michigan aforesaid, by a certain writing obligatory, sealed with their seals, the date whereof is the day and year last aforesaid, acknowledged themselves to be held and firmly bound, jointly and severally, unto the United States, in the sum of nine thousand six hundred dollars above demanded, to be paid to the said United States, which said writing obligatory was and is subject to a certain

condition thereunder, written in the words and figures following, to wit: "The condition of the above obligation is 368 such that if the above-bounden Brevoort, Jr., & Mullett shall well and truly and faithfully, and according to the laws of the United States and the instructions of the said surveyor general, make and execute the surveys which are required of him to be made by the foregoing contract, and return the field-notes of the said survevs to the surveyor general in the manner and within the period named in the said contract, then this obligation to be void, or otherwise it shall remain in full force and virtue." Which bond or writing obligatory was and is attached to the agreement hereinbefore in this declaration particularly set forth and described, and the said condition thereof has express reference to the covenants and agreements to be performed by the said Henry Brevoort, Junior, & James H. Mullett, two of the above-named defendants, as parties to said agreement hereinbefore set forth in the foregoing declaration.

And the said plaintiffs further aver and say that they have fully and faithfully complied with the terms and conditions of the contract above set forth to be performed on their part; that heretofore, to wit, on the twenty-fourth day of July, in the year of our Lord one thousand eight hundred and forty, they paid to the said defendants Henry Brevoort, Jr., & James H. Mullett, the sum of four thousand and forty-two dollars and seventy-eight cents as a full compensation for the aforesaid surveys in the said contract above set forth to be made by the said defendants Henry Brevoot, Jr., & James H.

Mullett.

And the said plaintiffs in fact further say that the said Henry Brevoort, Jr., & James H. Mullett, deputy surveyors as aforesaid, did not well and truly and faithfully and according to the laws of the United States and the instructions of the surveyor general, make and execute the surveys which were required of them to be made by the aforesaid contract, and did not return the field-notes of the said surveys to the surveyor general in the manner and within the period named in the said contract, although not prevented by the act of God.

And the said plaintiffs in fact further say that the said Henry Brevoort, Jr., and James H. Mullett did not in their own proper person, with the assistance of such chainmen and axmen and flag-bearers as were necessary agreeably with the laws of the United States and such general and special instructions as they received from the surveyor general, faithfully bey out, survey, and subdivide into sections the lands and premises particularly set forth and hereinbefore mentioned and described in said contract, nor did they complete the said surveys in the manner aforesaid, nor did they return the true and original field-notes thereof to the office of the said surveyor general on or before the fifteenth day of August next ensuing the date of said contract, acts of God excepted.

By reason of which said breaches the said writing obligatory became forfeited, and thereby an action hath accrued to the said plaintiffs, The United States of America, to demand and have of and

from the said defendants the said sum of nine thousand six hundred

dollars above demanded.

Yet neither the said Henry Brevoort, Jr., or James H. Mullett nor the said defendants John Mullett and John Hodgson, or either of them, though often requested so to do, have paid the said penalty above demanded, or any part thereof, but to pay the same have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of the United States of nine thousand six hundred dollars, thereupon they bring suit, &c.

GEORGE C. BATES, U. S. Attorney.

Filed May 23, 1850.

JNO. WINDER. Clk.

No. 2198.

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Plea of Henry B. Brevoort, Jr.

Circuit Court of the United States for the District of Michigan.

HENRY BREVOORT, JR., Impleaded with JAMES H. MUL-LETT, JOHN MULLETT, and JOHN HODGSON, THE UNITED STATES OF AMERICA.

And the said Henry Brevoort, Jr., impleaded with James H. Mullett, John Mullettand John Hodgson, by Willcox & Gray, his attorneys, as to the said declaration of the said plaintiffs, says that the said plaintiffs ought not, by reason of anything by them in said declaration alleged, to have or maintain their aforesaid action thereof against him, the said defendant, because they say that the said Henry R. Brevoort, Junior, & the said James H. Mullett did, after the making of said articles of agreement and the said writing obligatory in the said declaration mentioned, to wit, on the fourteenth day of August, in the year of our Lord one thousand eight hundred and forty, in the State of Michigan aforesaid, in their own proper persons, with the assistance of such chainmen, axemen and flag-bearers, as were necessary agreeably with the law of the United States, and with the general instructions to the deputy surveyors, and such special instructions as they did receive from the surveyor general, faithfully lay out, survey and subdivide into sections the townships described in said contract or articles of agreement, including the survey of the line between townships twenty-five and twenty-six north in range seven west, and did complete said surveys in the manner aforesaid, and did return the true and original field-notes thereof to the office of the said surveyor general on the fifteenth day of August, in the year of our Lord one thousand eight

hundred and forty, according to the true intent and meaning of the said contracts and of the said writing obligatory in this behalf.

And also for that the said Henry B. Brevoort, Jr., & James H. Mullett did, to wit, on the said fourteenth day of August, well and truly and faithfully, and according to the laws of the United States

and the instructions of the surveyor general, make and execute the surveys which were required of them to be made by the said contract in said declaration mentioned, and did return the field-notes of said surveys to said surveyor general in the manner and within the period named in said contract, to wit, on the said fourteenth day of August, in the year aforesaid, according to the true intent and meaning of said writing obligatory and of said contract in that behalf.

And this he, the said Henry B. Brevoort, Jr., prays may be en-

quired of by the count-y, &c.

And the said plaintiffs do the like.

WILLCOX & GRAY, Att'ys for D'f't Brevoort.

Filed Oct. 16, 1850.

JNO. WINDER, Clerk.

372 Plea of James H. Mullett, John Mullett, & John Hodgson.

Circuit Court of the United States for the District of Michigan.

James H. Mullett, John Mullett, and John Hodgson, Impleaded with Henry Brevoort, Junior, ads.

The United States of America.

And the said James H. Mullett, John Mullett, and John Hodgson, impleaded with Henry Brevoort, Junior, by Howard and Mandell, their attorneys, as to the said declaration of the said plaintiffs, say that the said plaintiffs ought not by reason of anything by them in said declaration alleged to have or maintain their aforesaid action thereof against them the said defendants, because they say that the said Henry Brevoort, Junior, and the said James H. Mullett, did, after the making of said articles of agreement and the said writing obligatory in said declaration mentioned, to wit, on the fourteenth day of August, in the year of our Lord one thousand eight hundred and forty, in the State of Michigan aforesaid, in their own proper persons, with the assistance of such chainmen and axemen and flag-bearers as were necessary, agreeably with the laws of the United States and with the general instructions to the deputy surveyors and such special instructions as they did receive from the said surveyor general, faithfully lay out, survey and subdivide into sections the townships described in said contract or articles of agreement, including the survey of the line between townships twentyfive and twenty-six north, in range seven west, and did complete and survey in the manner aforesaid, and did return the true and

original field-notes thereof to the office of the said surveyor general on the fifteenth day of August, in the year of our Lord one thousand eight hundred and forty, according to the true intent and meaning of the said contract and of the said

writing obligatory in this behalf.

And also for that the said Henry Brevoort, Junior, and James H. Mullett, did, to wit, on the said fourteenth day of August, in the year aforesaid, well and truly and faithfully and according to the laws of the United States and the instructions of the surveyor general, make and execute the surveys which were required of them to be made by the said contract in said declaration mentioned, and did return the field-notes of said surveys to the said surveyor general in the manner and within the period named in said contract, to wit, on the said fourteenth day of August, in the year aforesaid, according to the true intent and meaning of said writing obligatory and of said contract in that behalf.

And this they the said James H. Mullett, John Mullett, and John

Hodgson, pray may be enquired of by the county, &c.

HOWARD & MANDELL,

And the said plaintiffs do the like.

GEO. C. BATES, U. S. Dist Att'y, Mich.

Att'ys for said Def'ts.

Filed Sept. 18, 1850.

JNO. WINDER, Clerk, By GEO. G. BULL, Deputy.

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Verdict in Favor of Defendant.

At a session of the circuit court of the United States for the seventh circuit and district of Michigan, continued and held pursuant to adjournment at the district court-room, in the city of Detroit, on Saturday, the twenty-third day of November, in the year of our Lord one thousand eight hundred and fifty.

Present: Hon. Ross Wilkins, district judge.

THE UNITED STATES OF AMERICA

vs.

Henry Brevoort, Junior, James H. Mullett, John Mullett, & John Hodgson.

The jurors empaneled and sworn to try the issue joined in this case being called, appear and take their seats in the jury-box, to wit: Ransom Curtiss, Franklin Wasson, Louis Beaubien, Erastus Clark, George W. Rice, James Patchin, Mason Palmer, Elisha Tyler, David Kendall, Nicholas W. Pullen and Lewis Hall; who, after hearing all the evidence adduced by both parties, and the arguments of counsel on either side, and after hearing the charge of the court, retire to consult of their verdict under the charge of A. Wickware, the officer sworn to attend them, and, after being a short time absent, return into court and say they find for defendants.

And on like offer, objection, ruling and exception, the court excluded

Ехнівіт 176.

Detroit, Dec'r 13, 1850.

SIR: In pursuance of the suggestion of Mr. Lucius Lyon, late surveyor general, contained in his official report of Nov. 5, 1849, (see Ex. Doc. No. 1, 1st sess. 31 Cong., part II, p. 282, Senate), sundry suits were commenced the last year in the circuit court, U. S., for this district, against Dep. Surveyors Nicholson, Brookfield, Brink, Brevoort & James H. Mullett, (see p. 283), on all whose bonds, except Brookfield's, John Mullett of this city was surety. Lyon urged the institution of these suits for the purpose, as is here generally believed, and as I have not the least doubt, of preventing the appointment of John Mullett, who is a very competent and excellent man, as his, Lvon's successor. I was employed by Mr. M. as his counsel to defend the suits in which he was interested. The case, avowedly the strongest for the Government, that against Henry Brevoort, Jr., & James H. Mullett (as joint contractors), and their sureties, was lately tried. After a protracted and careful trial, the jury returned a verdict for the defendants. Mr. Bates, the dist. att'y took exceptions to some of the rulings of the court, which I do not, I confess, deem important, because the facts in the case would not. in any event, warrant a recovery. We produced and proved the original field-notes of the deputies, and proved the actual running and marking of the lines by the chain-carriers.

There was not the slightest proof that the "returns of surveys were fraudulent," or that any portion of the field-notes were "ficti-

tious," as stated by Lyon in his report.

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There was indeed no proof whatever of fraud or neglect on the part of those deputies or their hands. On the contrary, they proved that they worked hard and diligently for four months. The 376 court and jury were satisfied that Lyon's charges of fabri-

cating returns was without any foundation.

The only testimony the Government relied upon was that of Mr. William A. Burt, a deputy surveyor. In April, 1849, as he swore, he was sent by Lyon to explore and examine the lands in question, as well as others, with a view to ascertain the correctness of the surveys, and Lyon was to pay him out of then the late appropriation (see L. U. S., vol. 9, p. 364), by allowing him the price of surveying a township for every period of fourteen days which he should spend in exploring. He also swore that he made no contract with Lyon to resurvey the lands, but proceeded under such instructions as the above. He was out one hundred and seventeer: days, visited numerous townships, passing through them in various directions, and resurveyed one (T. 26 N., R. 7 W.), and part of another, and returned home in Sept., for which Lyon paid him over three thou-Lyon swore that he employed him under a letter of sand dollars. instructions from the Commissioner Gen'l Land Office then produced in court, which was not written until the following June, nor until long after Burt had been sent off upon the work—a plain falsehood.

Neither by that instruction nor by the act referred to had Lyon any authority to spend the money for examining and exploring merely, but only for the "correction of erroncous and defective surveys" (see the instructions to Lyon dated June, 1849, and the Act L. of 1849, p. 62). At six dollars a mile the survey of a township will cost about three hundred and sixty dollars, and the work done by Burt, which he was authorized by law to do, would be worth about \$540. Lyon is therefore justly a debtor to the Government for about \$2,500, which he has squandered in this transaction on a favorite. When testifying as a witness he refused to say whether he had at any time received credible information that these surveys were defective, and I do not believe he had ever been so informed. There is no proof of it. But it certainly was one way to grind an axe on the Govern-

ment. The chief clerk in his office has told me that the whole scheme was gross humbug. Burt's testimony was utterly inconclusive. He said himself that he found very many of the old monuments (the surveys were made in 1840 under contract of 1839), and that a large portion of the country had been run over by fire which consumed much of the timber. We proved the same facts by others.

I write this at the request of my clients. I feel assured that no recovery can be had in any of the cases above alluded to. The proofs are insufficient, as I think, but it rests upon the Government

whether they will proceed farther.

I understand that the account of James II. Mullett for surveys made by him last season is suspended at the department on account of the pendency of this suit and one or two others in which he is security. I beg to assure you that his character stands fair as a man. The suspension of his account operates very severely upon him, and I sincerely hope the department may be able to relieve him.

Lyon, it is said, is about to visit Washington. Should be call on you in reference to these matters, I beg you would believe him so far as his story is corroborated by undoubted evidence, but no farther. He is a schemer, and has one particular friend and backer in the General Land Office, as I am credibly informed.

I have the honer to remain

Very respe 'fully, your ob't serv't, J. M. HOWARD.

Hon. A. H. H. Stewart, Secretary Interior, Washington, D. C.

378 And on like offer, objection, ruling, and exception, the court excluded

Ехнівіт 177.

United States Dis. Att'y's Office, Detroit, Feb'y 10, 1851.

Sir: In reply to your question as to the present situation of the suit in favor of The United States rs. Henry Mullett, Henry Brevoort as principals, and John Mullett, John Hodgson et al. as sureties, I have to reply that the cause was tried in December, and has been

taken to the Supreme Court on a bill of exceptions to the ruling of the judge. But the evidence on the trial showed conclusively that the contract for the survey had been faithfully fulfilled, and I have no doubt that the defendants will eventually have a verdict. But as the charge of the judge was clearly erroneous, and as it applies to other cases, the U.S. could not permit it to remain. The sureties, too, are perfectly good, and should the Gov't finally recover, the amount will be paid. Under these circumstances, I can see no reason why the Gov't should withhold the amount due Henry Mullett for his surveys of the last year.

Your ob't ser't,

GEO. C. BATES, U. S. Dis. Att'y, Mich.

Hon. James L. Conger, M. C. elect.

And on like offer, objection, ruling, and exception, the court excluded

Ехнівіт 178.

United States Dis. Att'y's Office, Detroit, Feb'y 11, 1851.

Six: In a more full explanation of the case of Henry Mullett's claim to be paid for surveys made by him some year or more since,
I would state that the suit pending in our court is an action

379 of debt on a bond against Henry Mullett and Henry Brevoort as principals, and John Mullett and others as sureties. That bond was executed in 1839, and the contract of survey was completed in July, 1840. The money now due to Henry Mullett is for a survey made a year before last, and has no connection whatever with the case pending in court. I have no doubt, from the evidence of the chainmen and axemen, that the jury will eventually find that they. Henry Mullett and Henry Brevoort, did perform their contract according to its terms. But as there are other cases to abide the decision of this one, and as the charge of the judge is clearly and manifestly wrong, this case must be prosecuted to a final decision. I can see, however, no objection to the payment by the Government to Henry Mullett of the amount due to him individually for his survey year before last, as the sureties in the suit pending are perfectly good, and in the event of a new trial and a verdict for the United States the money could be collected on the judgment. But the evidence taken at the former trial convinces me that the verdict will finally be that they, Brevoort and Mullett, did complete their contract according to its terms, and, therefore, nothing is due to the U.S. Were not other cases depending upon the decisions of the questions of law involved in the charge of the judge, I should unhesitatingly advise a discontinuance of the suit. As the case now stands, I can see no earthly objection to the payment of Henry Mullett for his last survey year before last.

Your ob't serv't,

GEO. C. BATES, U. S. Dis. Att'y, Mich.

Hon. Justin Butterfield, Commissioner Public Lands, Washington, D. C.

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And on like offer, objection, ruling and exception, the court excluded

Ехнівіт 179.

SURVEYOR GENERAL'S OFFICE, DETROIT, Feb'y 28, 1851.

Hon. J. Butterfield.

SIR: I deem it my duty to transmit to you the enclosed copies of charges made against Lucius Lyon, one of the deputies of this office.

Henry Brevoort, Jr., was formerly a deputy of this office, and the correspondence being of that character which explains itself, I deem remarks of my own altogether superfluous.

I am, sir, with great respect, your ob't serv't,

CHARLES NOBLE, Sur. General,

(First Inclosure.)

Copy.

179 A.

Detroit, Feb. 11th, 1850 (1851).

Chas. Noble, Esqr., sur. gen'l of Ohio, Mich., &c.

SIR: Having given notice that Lucius Lyon had not surveyed the district which he was under contract to survey for the U. S. the last summer, or if surveyed, he did not do the same personally, as

by instructions he was compelled to do,

I deem it my duty to make the following statement of facts in regard to the executions of said surveys, which, if true, ought to prevent the said Lucius Lyon from returning the notes of said survey. In the first place, the recent general instructions which have been adopted at this sur. gen'ls office, were made up by him during the period of time he, the said Lyon, was sur. gen'l of this district, and the execution of any surveys in any manner not strictly according to said instructions, was deemed by him a sufficient violation of the contract to justify him in rejecting the notes of the deputy,

and withholding the just compensation for the work which thence may have been done in a faithful and workmanlike

manner

After having been suspended in the office of the surveyor gen'l, his first care was to monopolize a llthe public surveys in this district. It will appear, upon examination, that he was allowed to enter into contracts for the execution of surveys, which it was impossible for him to execute in person during the extension of the contract, and, in order to secure to himself the emoluments & profits resulting from surveying so large a district, he employed other persons to do the field-work, and therefore did not run lines or make notes thereof personally, as by instructions he was bound to do.

The said Lyon also, for the purpose of covering up the fraud he intended to practice upon the surveyor general's office of this district,

as regards his personal attention to surveys, as well as the General Land Office, did descend to the contemptible practice of addressing to one of the public newspapers of this city certain articles for publication relative to public lands, which said communication purported to have been written, and dated at Grand Traverse bay, a distance of 250 or 300 miles from this city; when at the same time, he, the said Lyon, was well known then in the city of Detroit.

That he did not accompany his party to the district which he was to survey, but remained a long time in this city after they had departed, that when he did go to look after those employed by him, he remained but a short time with them, and did not, personally, run any lines or keep notes of the surveys, and that he soon returned to Detroit, and then went to Lansing, the seat of government of this State, and spent a long time at that place during the session of the convention for forming a new constitution. It is also well known that from the length of time he was in this city, and at other places, he could not have appropriated more than 5 or 6 weeks to a personal attention of the field-work, or examination of lines by those em-

ployed by him. The undersigned cannot perceive why the said Lucius Lyon should be allowed to violate the instructions, which are considered to be binding on all deputies, and thereby

enabled to monopolize the business of surveying large districts, when others, more competent and experienced men, would have been glad to have been employed, but who have been crowded out of the business by the monopoly thus created for his special benefit.

It is believed by many who have had occasion to investigate the matter that the said Lyon is not competent to do good work, or, if competent, he has carelessly or fraudulently executed surveys for the United States in years past.

That many of the surveys executed by him in this State for the United States several years ago are proved to be erroneous, and in violation of the instructions at that time given to deputy surveyors,

to wit, township 6 north, of range 12 west, in this State.

The instructions which are now given to deputies makes it imperative that the deputy in the execution of the surveys to be made by him shall use Burt's patent solar compass, an expensive instrument and liable to get out of adjustment, and it is well known that in districts where there is no local attraction, the common instrument usually used for public surveys, is as good, if not better; not so liable to get out of adjustment, and in all respects correct in the lands of an experienced and practical man. It is stated by good authority that Lyon did not furnish or procure Burt's patent compass for running the lines in his district, for all those who were employed by him to run lines states that only one instrument of that description was in use, and used by one party only. The other parties using the common compass altogether. If instructions were deemed so sacred by him whilst acting as surveyor gen'l, why should be be allowed such latitude to disregard and farm out the surveys as he pleased and most convenient for making the most out of the job? For the above reasons I cannot perceive the propriety of allowing the said Lyon to receive pay or return notes of surveys of which

he must be totally ignorant, and furthermore, he has borrowed money from several of his deputies, and has never paid it back to them, without he has done it within a day or two, and that I doubt very much, for several of his men that was employed by him the past summer (if they speak the truth, and I have no doubt they do), they have not as yet been paid by Lyon, and probably will never get pay from him, and serve them the way he did his deputies, and a certain person from Lake Superior; is that honesty or Christian-like?

Very respectfully, your obedient servant, (Signed) HENRY BREVOORT, JR.

No. 2, H. Brevoort to sur. gen'l.

(Second Inclosure.)

(Copy.)

179 B.

ДЕТКОГТ, Feb. 14, 1851.

Charles Noble, Esq., sur. gen'l of Ohio, &c.

Sir: I have just received yours of the 7th inst. in reply to my note of the 5th, giving you information of the total disregard of the terms of a contract, and the general instructions on the part of Lucius Lyon, one of your deputies. Now you request me to furnish you with the proper testimony of the truth of my statement. In answer to your request, I would inform you that whenever you will bring the subject before a tribunal, competent to take testimony and to compel the attendance of witnesses, they shall not be wanted. In the meantime, it would not be proper to ask persons to volunteer their testimony when no use could be made of it.

But to bring down the ire of an unprincipled individual who might do them an injury, or get them out of the way when their

testimony might be needed.

Very respectfully, your ob't serv't,
(Signed) HENRY BREVOORT, Jr.

No. 3, copy, H. Brevoort to sur. gen'l.

384 And after like offer, objection, ruling and exception, the court excluded

Ехнівіт 180.

GENERAL LAND OFFICE, January 15th, 1853.

Charles Noble, Esq., surveyor general, Detroit, Michigan.

SIR: In order to determine definitely what action should be had with reference to your office, in view of the requirements of the act of 12th June, 1840, it is important that the department should be advised of the exact condition of your district, both as regards the field and the office work yet remaining to be done.

Such information, it is thought, can best be obtained by a full

and free personal conference between the officers in charge of that branch of the business here and your own office, and as the pressure upon this office during the session of Congress is so great as to render it inconvenient to spare any of its clerical force, I have to request that you will, as early as may be convenient, detail some competent person in your office to procure the desired information, and bring it on, with such explanations and suggestions as you may deem it serviceable to make.

The individual selected for this duty should, of course, be one in whose experience and judgment the department can repose entire confidence, and his expenses will be defrayed out of the general

surveying fund.

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The great experience of your chief clerk, Mr. Frost, will probably enable him to give more information on the subject than any other of your assistants.

Very respectfully, your ob't serv't,

JOHN WILSON, Commissioner.

After like offer, objection, ruling and exception, the court excluded

Ехнівіт 181.

Surveyor General's Office, Detroit, Febr'y 14, 1853.

SIR: To enable me fully to comply with the requirements of your letter of the 15 ult., I have caused to be prepared, with as much care as could be bestowed upon it in the limited time which could be devoted to that purpose, a full schedule of office and field work yet to be performed in this district, preparatory to turning over the papers and documents to the authorities of the State of Michigan, and have detailed the bearer, George S. Frost, Esqr., chief clerk of this office, to proceed to Washington in person therewith, for the purpose of having full and free personal conferences with the officers in charge of that branch of the business there.

The great experience of Mr. Frost in the business of this office, and his good judgment, will enable him to give all the information relative to the condition of the office which the department may

deem important.

I am, respectfully, your ob't serv.,

CHARLES NOBLE,

Sur. General.

Hon. John Wilson, Commissioner, &c., Washington.

Schedule of Office and Field Work yet to be Performed in this District Preparatory to Turning over the Papers and Documents to the Authorities of the State of Michigan.

1. There are 7 townships remaining unsurveyed in the mineral

region, Upper Peninsula.

2. There are 7 townships of the surveys of 1851 which are suspended for examination, situated in the Upper Peninsula.

3. There are ten townships of resurveys now under contract which have not yet been completed, in the Lower Peninsula.

4. The islands in Saginaw river & bay are now under contract for survey.

Office Work.

There are 94 townships of surveys and resurveys of the past season yet to be platted.

There are 500 townships, including the above, the descriptive

notes of which are to be made.

There are 660 townships, the field-notes of which are yet to be transcribed.

There are 530 townships, the field-notes of which are yet to be recorded.

This will all be clearly seen by reference to the diagram of the

State accompanying this statement.

The progress of the regular office work has been very much retarded by the labor which has attended the making up and copying of the lists of swamp lands granted to this State. As this labor is now nearly finished, should no other extra duties be imposed upon this office, the whole force of the office may be applied to the regular work, and, if prosecuted with energy, much of the work now on hand may be accomplished during the present year.

CHARLES NOBLE, Surveyor General.

Surveyor general's office, Detroit, Feb. 12, 1853.

P. S.—It will be observed that the above statement is exclusive of any resurveys which may hereafter be made.

387 After like offer, objection, ruling and exception, the court excluded

Ехнівіт 182.

The schedule accompanying the surveyor general's letter of Feb. 14, 1853, in reference to the field and office work connected with the office at Detroit, only embraces a summary of such work as is necessary now to be accomplished with a view of closing up the affairs in that district.

There are, it is estimated, upwards of 100 townships, excluding the Higgins surveys, the original surveys of which are either reported (officially) to be fraudulent or defective, or have been so represented by individuals interested in the purchase of lands. Much of the office work has already been performed in these townships, and their resurveys, if made under the direction of the surveyor general, would involve the corresponding amount of office work, without reference to what has already been performed, as that would of course be cancelled.

But a small portion of the record plats have yet been made—only south of the base line and east of the meridian as far north as Saginaw bay.

If the remainder of these are to be made before closing up the office, or if it is necessary that they should be made, it will involve a vast amount of labor, if the work is properly performed.

There will be, it is estimated, 1,000 plats thus to be copied, including the plats in the mineral region, which require a great

amount of labor in copying.

These items were not embraced in the foregoing schedule for the reason that the former, it was supposed, would, by the act of Congress recently passed, come under the supervision of the General Land Office, and the latter was considered a work not absolutely necessary, tho' the same had been performed before transferring the papers to the States of Ohio and Indiana.

388 It may be proper to add, as an important fact in reference to the resurvey of land in the northern part of the Southern Peninsula, that it may be fairly estimated that the Government will

lose nothing by ordering the work.

If the swamp-land selections are made according to the indications of the present surveys, which are doubtless, to a great degree, fraudulent, the aggregate surplus of good agricultural lands, which would thus be granted to the State, would, when sold, be more than enough to pay the entire cost of resurvey.

The foregoing statement is furnished as requested, subject, however, to revision and correction hereafter, as the matter cannot be well digested without reference to the books and papers in the office

of the surveyor general at Detroit.

Respectfully submitted.

GEO. S. FROST.

Chief Clerk Surveyor General's Office, Detroit.

To John Wilson, Esq., Commissioner, Washington, Feb. 24, 1853.

Plaintiff's counsel then read

Ехнівіт 183.

GENERAL LAND OFFICE, Sept. 23d, 1859.

William Sanborn, Esq., dep. com'r, Lansing, Michigan.

SIR: I am in receipt of your letter of the 14th inst., respecting certain lands in the Ionia district, Michigan, selected under the swamp grant of Sept. 28th, 1850, and which have been patented to the State.

You state that a portion of the lands described by you have been sold at the U. S. land office at Ionia, and that others thereof are in

the market under the general instructions from this office.

If the local land offices are permitting the entry of any lands claimed as swamp, they are doing so in violation of express instructions to the contrary. To prevent such sales in future,

389 if they are permitting them, I have this day directed them to withhold from sale or disposition in any manner any tracts reported to them as swamp.

The tracts in question were confirmed to the State by the act of 3d

March, 1857, and any sale since that time, except in case of settlement made prior to that date, is invalid and will be cancelled.

Very respectfully, your ob't serv't,

JOS. S. WILSON, Act'g Commissioner.

And then read

Ехнівіт 184.

MICHIGAN STATE LAND OFFICE, LANSING, February 20th, 1862.

His excellency Austin Blair, governor.

Sir: Yours inclosing the communication of the Commissioner of the General Land Office of the 15th of Jan'y, 1862, in reference to cancelling the patent issued by the State for lot 2 of sec. 21, T. 38 N., R. 23 W., Sault Ste. Marie district, is received and has again been considered, after a submission of the law of the case to Attorney General Upson, whose opinion is on file. The facts are conceded to be as follows:

This lot 2, of sec. 21, T. 38 N., of range 23 W., is included in the grant by Congress to the State of Michigan, by virtue of the act of the 28 Sept., 1850; it was so determined by the rule adopted by the surveyor general of this State, which rule was recognized by the Commissioner of the General Land Office in a communication to the Secretary of the Interior, dated Jan'y 22nd, 1858, explanatory of his instructions under the swamp-land grant of 28th Sept., 1850. Having been so determined, it was regularly listed and patented to this State in March, 1856, and in August, 1858, after having been

publicly advertised by the then commissioner of the State and office, it was sold at public auction to Messrs. Ludington and Wells, who paid the price bid, and received of the State

a patent therefor.

I am unable to find any shadow of mistake or irregularity in the proceedings. It also appears that the tract was located at the district land office with wt. 44,118, on the 16th of July, 1853; that this location was cancelled on the 22nd of March, 1854, for conflict with the State, under the law of Sept. 28, 1850, and the warrant returned to the locator, who refuses to accept it, etc.

You are required to cancel the patent issued to Ludington & Wells by the State, so that a patent may issue to the locator of July

the 16th, 1853, by the General Government.

The question presented is simply one of priority of title, which of the two parties, the State or locator, under the land warrant, obtained the elder or first title of the General Government, the same source.

We hold that the act of Congress of Sept. 28th, 1850, was absolute, and conveyed to the State of Michigan a right to the land in question from the date of the act, and that when there is a conflict of title from the same source, the latter must give way to the earlier title.

These conclusions are founded, it is believed, upon well-settled principles of law, and will be found very elaborately discussed in an opinion furnished the Secretary of the Interior by Attorney General Black, under date of Nov. 10th, 1858, in relation to con-

flicting railroad and swamp land claims.

Attorney General Black says: "That the act of Congress of Sept. 28th, 1850, gave the State of Michigan a right to this land from the date of the grant:" "that when there is a conflict between two titles derived from the same source, either of which would be good if the other were out of the way, the elder must always prevail, prior in tempore, potior est in jure." * * * "It is not necessary that the patent should issue before the title vests in the State, under the act of 1850. The act of Congress was itself a present grant, want-

ing nothing but a definition of boundaries to make it perfect, and to obtain that object, the Secretary of the Interior was directed to make out an accurate list and cause patents to issue therefor; but when a party is authorized to demand a patent for land, his title is vested as much as if he had the patent itself, which is but the evidence of title. The subsequent grant by Congress * * * could not have been intended to take away from the State the rights previously vested for other purposes. * * * Even if we could suppose that to be the meaning of Congress, in this case it would avail nothing to the later grantee, since in all conveyances a later grant must yield to an earlier."

Thus the opinion- of the State authorities are confirmed by the

opinion of Att'y Gen'l Black.

Your excellency is well aware also of the doctrine held by our own Supreme Court in regard to the cancelment of deeds or other evidences of title by executive officers, and the patentees in this instance have vested rights which, according to the decision referred to in the case of *The People vs. The State Treasurer*, 7th Michigan Reports, cannot be summarily cancelled and annulled by the act of an executive officer, but they are entitled to have those rights tested in a judicial manner in the courts of law.

It appears to me, therefore, evident that by virtue of the act of Sept. 28, 1850, the State of Michigan became, at that date, vested with the rights to this lot 2; that she has the elder and prevailing title over any grant made subsequently by the General Land Office, and that the patents issued by the State in 1858 ought not of right to be cancelled or annulled by the executive, but that the parties be

left to try their legal rights in the proper courts.

Very respectfully your ob't servant,

SAMUEL S. LACEY, Commissioner.

392 And then read

Ехнівіт 185.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., Jan'y 5, 1873.

L. A. Clapp, Esq., commissioner of lands, Lansing, Mich.

SIR: In reply to your communication of the 31st ult., I have to state that our records show that the lands described by you, viz:

N 1 of N W 1 se	e. 1, 34	N, R. 29	W, Mich
NElof NEl "	2, "		**
S 1 of N E 1 "	2. "	66 66 66	4.6
SE 1	2,	do.	do.
NE t of NE t	11	**	4.6
N 1 of N E 1	12	4.6	61
N 1 of N W 1	12	44	6.6
SE t of SE t	35, 35	64	**
S 3 of S W 1	36	6.6	64
Siof SE	36	44	6.1

were selected as swamp lands January 16th, 1855.

The aforementioned tracts are confirmed to the State as swamp lands by act of March 3d, 1857, and there being no legal adverse claim prior to that date, will this day be listed and submitted to the Secretary of the Interior for his approval, preliminary to patenting the same to the State of Michigan as swamp lands.

Very respectfully,

WILLIS DRUMMOND, Commissioner.

Indorsed : Pat. rec'd.

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And then read

Ехнівіт 186.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Oct. 24th, 1873.

His excellency the governor of Michigan, Lansing, Mich.

Sir: I have the honor to transmit herewith a certified copy of approved list No. 18, of swamp and overflowed lands, selected as enuring to the State of Michigan, under provisions of the act of Congress approved Sept. 28th, 1850, in the district of lands subject to sale at Ionia, Michigan. Please acknowledge receipt thereof, and transmit your request for patent.

Very respectfully, your ob'd't se'v't,

W. W. CURTIS, Acting Commissioner.

Indorsed: Patent applied for Dec. 4th, 1873.

And then read

Ехнівіт 187.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, WASHINGTON, D. C., Feb'y 20, 1874.

L. A. Clapp, Esq., commissioner of State lands, Lansing, Mich.

SIR: In reply to your letter of the 9th inst., relative to the W ½ of S E ¼ sec. 14, T 11 N, R 14 E, former Detroit district, Mich., I have to state that our records show that the tract in question was selected as swamp land Jan'y 26, 1853, and approved as such June 25, 1853, but was never carried into patent.

The above land is confirmed to the State as swamp by act of March 3d, 1857, and there being no legal adverse claim thereto, it will be patented to the State of Michigan at an

early day.

Very respectfully,

WILLIS DRUMMOND,

Commissioner.

Indorsed: Patent received.

And then read

EXHIBIT 188.

K.

DEPARTMENT OF THE INTERIOR, H. W. B. GENERAL LAND OFFICE, WASHINGTON, D. C., Nov. 17, 1875.

His excellency the governor of Michigan, Lansing, Mich.

SIR: I have the honor to transmit herewith a certified copy of approved list No. 22, of swamp and overflowed lands selected as enuring to the State of Michigan, under the provisions of the act of Congress approved September 28, 1850, in the district of lands subject to sale at Traverse City.

Please acknowledge receipt thereof, and transmit your request

for patent.

Very respectfully, your ob't serv't,

Ans. J. J. B.

S. S. BURDETT,

Commissioner.

And then read

Ехнівіт 189.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., April 10th, 1876.

L. A. Clapp, Esq., commissioner of State lands, Lansing, Mich.

Sir: In reply to your letter of the 14th of January last, respecting certain lands in the State of Michigan, I have to inform you that the following tracts, to wit:

395 S E 1 of N E 1 sec. 27, T. 25 N., R. 7 W., patent. 27, W & of N E } patented. NW t of SW t " 27, patented. SE t of SW t 44 27, patented. NE t of NW t 3. 23 9 patented. SE 1 of NW 1 11. 30 9 patented.

are included in list No. 24 of swamp and overflowed lands for the Traverse City district, which was on the 8th instant submitted to the Secretary of the Interior for his approval, preliminary to patenting the same to the State of Michigan as swamp lands.

The S W 1 of S W 1 of sec. 25, T. 20 N., R. 3 W., will be included

in the next list prepared for the Ionia district.

Very respectfully, your ob't serv't,

U. J. BAXTER, Acting Commissioner.

And then read

Ехнівіт 190.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, WASHINGTON, D. C., April 13, 1876.

His excellency the governor of Michigan, Lansing, Mich.

Sir: I have the honor to transmit herewith a certified copy of approved list No. 24, of swamp and overflowed lands selected as enuring to the State of Michigan, under the provisions of the act of Congress approved Sept. 28, 1850, in the district of lands subject to sale at Traverse City, Mich.

Please acknowledge receipt thereof and transmit your request for

patent.

Very respectfully, your ob't serv't,

U. J. BAXTER, Acting Commissioner.

Answered and patent requested.

G. H. H.

396 And then read

Ехнівіт 191.

Flint & Pere Marquette railway, land department. W. L. Webber, land commissioner and solicitor.

EAST SAGINAW, MICH., Dec. 26, 1876.

Com'r State land office, Lansing, Mich.

D'r Sir: Will you please inform me who entered W $\frac{1}{2}$ of S E $\frac{1}{4}$ of sec. 23, and N $\frac{1}{2}$ of N W $\frac{1}{4}$ section 26, both in T 18 N R 7 west, Osceola Co., and at what date?

Will you advise me whether the State has made a final adjustment of its claim for swamp lands, so far as the same relates to

Mason county.

My inquiry has reference especially to an island in Pere Mar-

quette lake, in secs. 25 and 26, T 18 N, R 18 W. That part of the island on sec. 25 has been certified by the Com'r of Gen'l Land Office as part of the grant to this company, and I desire to know whether the State has any unsettled claim or will have any claim to that part of the island which lies in sec. 26.

An early reply will much oblige,

WM. L. WEBBER, Land Com., Per NEWTON.

MEM.—Alonson F. Orton and Henry J. Orton of Newaygo Co.,

And then read

Jan. 4, 1864.

Ехнівіт 192.

Michigan State Land Office, Lansing, Mich., Dec. 27th, 1876.

Hon. Wm. L. Webber, land com'r, East Saginaw, M.

DEAR SIR: In reply to your letter of yesterday, the W ½ of S E ¼ sec. 23, and N ½ of N W ¼ sec. 26, both in township 18 N, 397 R 7 W, were State swamp lands, and were sold by this department on Jan'y 4th, 1864, to Alanson F. Orton and Henry J. Orton, of Newaygo Co.

In relation to the final adjustment of the grant of swamp land to the State, we can only say that such adjustment has not been had

as regards any county in the State.

That part of the island in Pere Marquette lake lying in sec. 26, T 18 N, R 18 W, was never surveyed by the U.S. We claim that it will inure to the State under the grant whenever surveyed, the returns of the sur. gen'l stating it to be overflowed.

Very respectfully yours,

L. A. CLAPP, Com. SHERMAN.

And then read

Ехнівіт 193.

Refer in reply to this initial: E. K. K. 1889.—7073. R. A.

DEPARTMENT. OF THE INTERIOR, D. O. P. GENERAL LAND OFFICE, L. J. W.

Washington, D. C., Jan'y 22, 1889. J. V. W.

His excellency the governor of Michigan, Lansing, Mich.

SIR: I have received your letter of January 14, 1889, requesting that the N $\frac{1}{2}$ of the S E $\frac{1}{4}$ of sec. 6, in township 2 north, of range 2 west, Michigan, may be patented to the State of Michigan as swamp land.

I have to state in reply that the N W ¼ of the S E ¼ of said sec. 9 does not appear to have been claimed as swamp land. Said tract was sold July 9, 1878, to Silas P. Hovey and Henry P. Taylor, and was patented to them from March 5, 1880.

The NE 1 of SE 1 of said section appears to have been reported as swamp land March 29, 1852. If, on examination. 398 no adverse claim shall be found to exist, a list embracing said tract will be presented to the Secretary of the Interior for approval.

Very respectfully.

S. M. STOCKSLAGER. Commissioner.

And then read

EVHIRIT 194

DEPARTMENT OF THE INTERIOR. GENERAL LAND OFFICE. Washington, D. C., August 1, 1887.

Henry S. Sleeper, Esq., deputy State land com'r, Lansing, Mich.

Sir: In further reply to your letter of June 16, 1887, in regard to S W 1 of S W 1 of sec. 11, in township 8 south, of range 12 west. Michigan, I have to state that said tract is embraced in a list anproved by the Secretary of the Interior, July 23, 1887.

A certified copy of said list will be sent to the governor of Michi-

gan in a few days.

Very respectfully.

S. M. STOCKSLAGER. Ass't Commissioner

And then read

Ехнівіт 195.

DEPARTMENT OF THE INTERIOR. GENERAL LAND OFFICE. Washington, D. C., September 28, 1887.

His excellency the governor of Michigan, Lansing, Mich.

SIR: I have the honor to transmit herewith a certified copy of approved list No. 34, of swamp and overflowed lands selected as inuring to the State of Michigan, under provisions of the act of Congress approved Sept. 28, 1850 (R. S. sec. 2479), in the district of land subject to sale at Reed City, formerly at Ionia, Michigan.

> Please acknowledge receipt thereof, and transmit your request for patent.

Very respectfully, your obedient servant,

WM. A. SPARKS, Commissioner.

Mem.—N E S E, 20 18, 8 W.

Plaintiffs here rested.

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And the foregoing is a substantial statement of all the evidence in the case.

The attorney for the plaintiff then requested the court to instruct the jury as follows:

1. By virtue of the act of Congress approved September 28th, 1850, all the swamp and overflowed lands made thereby unfit for cultivation in the State of Michigan, which were then Yes. unsold and unappropriated by the United States, and containing the larger part of any legal subdivision in the Government survey, were by that act granted to and became the property of the State of Michigan.

2. By virtue of that act, not only all the lands which were actually swamp, containing an area of more than one-half of a legal subdivision of land, according to the United States survey of

Yes. the public domain, but all the land in each legal subdivision of the Government survey, the greater part of which was swamp, which was at the passage and approval of said act unsubstitution.

sold and unappropriated, became and was the property of the State.

3. It was competent for the Secretary of the Interior to determine

Yes. be identified, and to adopt the field-notes of the surveys on file in the office of the surveyor general as the method of identification.

400 4. The act of Congress made it the duty of the Secretary of the Interior to identify the lands granted, and when he tendered to the State of Michigan the election to receive the lands granted according to the field-notes of the Government sur-

No. vey as the basis of identification, in accordance with the instructions under date of November 21st, 1850, which method of identification was accepted by the legislature of the State by an act passed and approved June 21st, 1851, the method so tendered and accepted became a compact between the State of Michigan and the United States, and was binding upon both parties.

5. The Secretary of the Interior, having approved the selections contained and designated by legal subdivisions in a list called the Ionia land district No. 1, over his hand and bearing date the 27th day of October, A. D. 1853, and made a plat thereof under and in accordance with said act of Congress, and forwarded said

list of legal subdivisions and plat to the governor of the

State of Michigan, and suggested that the governor request patents therefor from the United States, and the governor having requested patents to be issued therefor on the 31st day of January, 1854, and the legal subdivisions in issue in this suit being contained in and designated as swamp lands in said list and plat as swamp lands enuring to the State of Michigan under said act of Congress; the title to the legal subdivisions described in the plaintiff's declaration in issue in this suit became fully identified and fully vested in the State of Michigan.

6. That after making said list and plat, and forwarding them to the governor of the State of Michigan, the work of issuing the patents therefor, as requested by the governor, was merely

No. ministerial, and the Secretary of the Interior could not deprive the State of Michigan of such lands by neglecting or refusing to issue patents therefor.

7. The act of Congress approved March 3d, 1857, confirmed to the State of Michigan all selections embraced in the approved list No. 1, of the Ionia land district, which were, at the date of said act, vacant and unappropriated, and not interfered with by previous settlement under the laws of the United States; and the uncontradicted evidence in this case showing that the

lands described in the plaintiff's declaration were embraced in such selections and contained in the approved list and plat made

No. by the Secretary of the Interior, and were, on the 3d of March, 1857, vacant, unappropriated and not interfered with by previous settlement under the laws of the United States; were by that act confirmed to the State of Michigan; such act of confirmation operating as a grant of lands embraced in such approved list and plat.

8. If such approved list made and approved by the Secretary of the Interior was, on the 3d of March, 1857, withheld from patent because of resurveys having been ordered or made, and if he had any corrective or other authority over such list to alter and

No. act upon it, then the act of March 3d, 1857, applied to such list and confirmed the lands designated therein to the State of Michigan, and deprived the Secretary of the Interior of all power in the premises save to cause patents to such lands to be issued to the State of Michigan.

9. The testimony in the case fails to show that there had been any such adjustment of the swamp-land grant between the

No. State of Michigan and the United States, as in law deprives the State of the title of the land granted to it under the act of Congress of September 28th, 1850, and claimed in this suit.

10. The testimony in this case fails to show that there has been any estoppel as against the State to forbid its grantee and

No. those claiming title from the State to rely upon the act of Congress granting the lands involved in the issue in this case to the State.

No. 11. Upon the whole record and the testimony given you in the open court, your verdict should be for the plaintiff.

COURT: Is there any claim made here under the statute of limitations?

Defendants' Counsel: No, your honor. We ask your honor to instruct the jury that upon the whole evidence the plaintiff 402 is not entitled to recover, and direct a verdict for the defend-

ant. That is our request to charge.

COURT: I will say to counsel that as it lies in my mind there is no substantial distinction between this case and the first, except that the lands in question are found in an approved list which was subsequently revoked and cancelled by the Secretary of the Interior, and the question that arises upon the power of the Secretary to order the resurvey, or revoke any certification of lands made by him before the actual issue of patents. If he had such power, then of course, the title of the defendants must prevail in this action, and I have no doubt the Secretary had the power not only to order the resurvey, as I have held before; but at any time before the issue of the patents, if he discovered that there was fraud or mistake, or

if he was satisfied upon the evidence before him that the lands were not of the character granted by the act of September 28, 1850, it was his duty, notwithstanding he had certified them to the State by approval of the list, to revoke that certification, cancel it, and the lands remain unaffected. And of course if the patents had issued, it is quite probable that his action would have been conclusive on the rights of the parties; that patent, not having been issued, and the Secretary having decided, as it was his province to decide, on the facts before him, that the lands were not of the character granted, I think the title of the defendants must prevail.

With reference to the act of 1857, my impression is very strong. Both from the reading of the act and from what I have seen in the decisions of the Department of the Interior, where the question has arisen once or twice, that that act was primarily intended for those selections of land made by the States themselves, pursuant to the surveys which they had made, and had no application, at least it wasn't originally intended for and does not apply to those lands designated as swamp lands under the surveys of the United States, and it certainly has no application to those lands, the lists of which

were set aside and cancelled, and of which a resurvey was 403 ordered by the Secretary of the Interior, and the act of 1857

could not, in my judgment, even if it intended to apply to all the States alike, it could not revive selections which had been so far cancelled by the Secretary of the Interior in the line of his duty, as to order a resurvey of those lands. Now, my views are very imperfectly expressed in this manner, because it comes in a hurry and I have not had a chance to reduce them to form. I will direct a verdict in this case for the defendants.

Mr. Champlin: I will take an exception to the refusal by the court to charge as requested in plaintiff's fourth, fifth, sixth,

seventh, eighth, ninth, tenth and eleventh requests.

And plaintiff's counsel also except to so much of the charge of

the court as reads as follows:

"I will say to counsel that, as it lies in my mind, there is no substantial distinction between this case and the first, except that the lands in question are found in an approved list, which was subsequently revoked and canceled by the Secretary of the Interior, and the question that arises upon the power of the Secretary to order the resurvey or revoke any certification of lands made by him before the actual issue of patents. If he had such power, then, of course, the title of the defendants must prevail in this action, and I have no doubt the Secretary had the power not only to order the resurvey as I have held before."

And plaintiff's counsel also except to so much of the charge of

the court as reads as follows:

"But at any time before the issue of the patents, if he discovered that there was fraud or mistake, or if he was satisfied upon the evidence before him that the lands were not of the character granted by the act of September 28, 1850, it was his duty, notwithstanding he had certified them to the State before approval of the list, to revoke that certification, cancel it, and the lands remain unaffected.

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And of course, if the patents had been issued, it was quite probable that this action would have been conclusive on the rights of the parties, that patent not having been issued, and the Secre-404 tary having decided, as it was his province to decide, on the facts before him, that the lands were not of the character granted, I think the title of the defendants must prevail."

And plaintiff's counsel also object to so much of the charge of

the court, as reads as follows:

"With reference to the act of 1857, my impression is very strong. Both from the reading of the act and from what I have seen in the decisions of the Department of the Interior, where the question has arisen once or twice, that the act was primarily intended for those selections of land made by the States themselves pursuant to the surveys which they had made, and had no application, at least it wasn't originally intended for and does not apply to those lands designated as swamp lands under the surveys of the United States. and it certainly has no application to those lands the lists of which were set aside and canceled, and of which a resurvey was ordered by the Secretary of the Interior, and the act of 1857 could not, in my judgment, even if it intended to apply to all the States alike, it could not revive selections which had been so far canceled by the Secretary of the Interior in the line of his duty as to order a resurvev of those lands."

And also except to the direction of a verdict for the defendants. And the said issue under the instructions aforesaid was submitted to said jury, and the said jury returned a verdict for the defendants, and against the plaintiff, that said defendants were not guilty of helding the land described in plaintiff's declaration, in the manner

and form as charged against it.

And because none of the exceptions so made, appear on the record of said trial, on request of the counsel for the plaintiff this bill of exceptions has been settled and signed this 15th day of August, A. D. 1893, the time having been duly extended for that purpose. HENRY H. SWAN

District Judge.

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Assignment of Errors.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Sixth Circuit, Eastern District of Michigan.

MICHIGAN LAND AND LUMBER Co. (LIMITED), Plaintiff,) CHARLES A. RUST, Survivor, etc., Defendant.

Now, to wit, on the 12th day of January, A. D. 1894, comes the said plaintiff in error before the said court, by its attorney, and says that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, to wit:

1. In not permitting the plaintiff to show by its witness, Oscar Palmer, that prior to 1853, and between 1850 and 1853, that the General Government, through its Land Department, had sold lands in every section by the plats of the old survey, in town 18 north, 3 west, State of Michigan, and had thus recognized this old survey

(Record, p. 61).

2. In not permitting witness Oscar Palmer to testify in answer to the question, "I will ask you if it was not a fact, that in this same town and some of these sections, land was sold; take 20, 21, 22, 28 and 35, and see if they were not sold on the same section before the resurvey" (Record, pp. 61, 62).

3. In not permitting plaintiff to show by its witness, Oscar Palmer, that the plat of the old survey of said township, 18 north, 3 west, " was a recognized Government survey, and in actual use by the Government, up to and including March 3, 1857" (Record, 406

- 4. In admitting in evidence against the objection of plaintiff, Exhibit 57, being a letter from John S. Barry to the President of the United States, dated February 3, 1842, sending inclosed therewith a copy of joint resolution of the legislature of Michigan, approved February 1, 1842, asking for the resurvey of eighty-one whole and fractional townships in said State, all lying east of the principal meridian, except towns 16, 17 and 18 north of ranges 6, 7 and 8 west, which exhibit is set out in full on pages 80 and 81 of the Record.
- 5. In admitting in evidence against the objection of plaintiff, Exhibit 58, being a letter of E. M. Huntington, Commissioner of the General Land Office, to President Tyler, dated Febuary 17, 1842, returning to the President the letter and inclosure of February 3, 1842 (Exhibit 57), and inclosing a diagram showing the districts referred to in the resolution, and stating that the records of the land office showed no evidence of irregularities in the surveys; that all the land except one township was open to private entry, and recommending that the matter be referred to the surveyor general at Cincinnati for examination; on which letter is an indorsement of the President directing such reference, all of which is set out in full on pages \$1 to \$3 of the Record.

6. In admitting in evidence against the objection of plaintiff, Exhibit 59, being a letter of E. M. Huntington, Commissioner of the General Land Office, to John S. Barry, governor of Michigan, dated February 21, 1842, acknowledging receipt of the governor's letter of February 3, 1842, with its inclosure (Exhibit 57), and inclosing a copy of the Commissioner's instructions to the surveyor general at Cincinnati, dated February 21, 1842, which instructions were to report any facts in his possession bearing on the matter, and make any suggestions that might occur to him for the correction of the supposed errors and preventing them in the future. A

similar diagram to that laid before the President was inclosed, also a letter to Dr. Houghton, of October 22, 1840, from J. A. Rousseau, acknowledging some defects in surveys made by him; also directing the surveyor general to enforce certain standng instructions to deputy surveyors, all of which is set out in full

on pages 83 to 85 of the Record.

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7. In admitting in evidence over plaintiff's objection, Exhibit 60, being the report of Surveyor General Haines to E. M. Huntington, Commissioner of the General Land Office, dated March 4. 1842, in pursuance of the instructions of February 21, 1842. report says deputies were appointed on the recommendation of parties known to the office upon which he must rely for evidence of the integrity of the deputy. As to the Rousseaus he found them employed when he took the office, and the employment was continued. Their work had been in the main satisfactory, and when errors had been found they had been corrected. In the summer of 1840, he had been informed that affidavits had been lodged with the register of the land office at Genesee, Mich., charging irregularities in the surveys. He then details how the letter to Dr. Houghton came to be written. He had written the register a number of times, but had received no reply, and doubts the existence of Had made inquiry at other sources as to the any affidavits. Rousseau surveys, but failed to obtain any accurate information. As to the districts of other deputies the letter of instructions contained the first information of irregularities.

The surveyor general recommends that Wm. A. Burt and John H. Mullett be employed to examine the towns charged to be erroneous, and report their condition, and if found defective, that new surveys be made at the expense of the contractors or their bondsmen.

He then explains how it might be possible for a deputy to make up fictitious returns of surveys, and says that such impositions had been practiced under some of his predecessors, and suggests that no Michigan official had ever complained to him of the state of the surveys, and that he was yet ignorant of the character of the alloged frauds.

leged frauds.

He then makes some suggestions as to providing against future errors.

All of which is set out in full on pages 85 to 94 of the Record.

8. In admitting in evidence over the plaintiff's objection, Exhibit 61, being a letter of E. M. Huntington, Commissioner of the General Land Office, to Governor Barry of Michigan, dated April 21, 1842, inclosing a copy of his instructions of the same date to Surveyor General Haines issued in consequence of the report of the latter, directing the employment of an experienced deputy to examine the towns alleged to be fraudulently surveyed, and containing some general instructions for such deputy. All of which is set out in full on pages 94 to 96 of the Record.

9. In admitting over the objection of plaintiff, Exhibit 62, being the instructions of Surveyor General Haines to Wm. A. Burt, dated April 11, 1842, Mr. Burt being employed to make the examination. The letter recites the previous correspondence with the Commissioner of the General Land Office, and instructs Mr. Burt to examine and report upon certain towns, sending him the original field-notes of some of them, all of which is set out in full on pages

96 to 98 of the Record.

10. In admitting over plaintiff's objection, Exhibit 63, being a letter dated August 1, 1842, of Surveyor General Johnson to

Thomas H. Blake, Commissioner of the General Land Office, which transmits to the department Mr. Burt's report on towns examined, and makes some comments on the same, found in full on page 99

of the Record.

11. In admitting over plaintiff's objection, Exhibit 64, being a letter dated October 4, 1842, of Blake, Commissioner of the General Land Office, to Hon. A. S. Porter, which acknowledges the receipt of a prior letter, and advises him of the receipt of the report of Mr. Burt, and that the towns examined appeared to be defective and fraudulent, and that it was the design of the office to issue the instructions for the necessary resurveys, which letter is found in

full on page 100 of the Record.

409 12. In admitting over plaintiff's objection, Exhibit 65, being a letter dated April 27, 1843, from Wm. Johnson, surveyor general, to Thomas H. Blake, Commissioner, acknowledging receipt of advices that \$4,000 had been set apart for making the resurveys, and stating the sum was not sufficient, and that in consequence the surveys would be confined to the towns nearest the coast, and that three deputies had been instructed to be ready to take the work, which letter is found on pages 100 and 101 of the Record.

13. In admitting over plaintiff's objection, Exhibit 66, being the report of the Commissioner of the General Land Office and surveyor general for the year 1843, showing the work of resurvey already undertaken under the instructions recited, and making and recommending an estimate for an appropriation for the completion of the resurveys north and west of Saginaw bay, an extract from

which report is found on pages 102 and 103 of the Record.

14. In admitting over plaintiff's objection, Exhibit 67, being a letter dated September 16, 1844, from Wm. Woodbridge to Blake, Commissioner of the General Land Office, urging the appropriations for surveys in Michigan, and particularly the prosecution of the work of resurveying the towns alleged to have been fraudulently surveyed, and alleging that the Genesee land office was selling lands by the plats of the old survey after new one made, which letter is

found in full on pages 103 to 105 of the record.

15. In admitting over the objection of plaintiff, Exhibit 68, being a latter of Commissioner Blake to Hon. Wm. Woodbridge, dated September 30, 1844, acknowledging receipt of his letter of the 16th, stating that \$15,000 had been apportioned to the surveys for the district of Ohio, Indiana and Michigan, and that under instructions to the surveyor general practically the entire sum would be expended in Michigan; that instructions had been issued for certain resurveys; that the land officers at Genesee had been

written to regarding the alleged sales by the plats of the old survey, which letter is found in full on pages 106 and 107 of

the Record.

16. In admitting in evidence over the objection of the plaintiff, Exhibit 69, being a letter of Blake, Commissioner of the General Land Office, to the register and receiver of the land office at Genesee, Michigan, dated October 1, 1844, stating he is advised that the plats

of the old survey are being used in making sales, and desires to know the reason, and that these plats should have been canceled on receipt of the plats of the new survey, and proper reference made, and that the plats of the fraudulent survey should not be used, which letter is found in full on pages 107 and 108 of the Record.

17. In admitting in evidence over plaintiff's objection, Exhibit 70, being the published reports of the Commissioner of the General Land Office and surveyor general for the years 1844 to 1848 inclusive. The report for 1844 says that the work of resurvey north and west of Saginaw bay was still unfinished, the work ordered April 13, 1843, had been completed, and that other work was in progress. It also recommends an appropriation for resurveying 44 townships west of Saginaw bay.

The report for 1845 says 12 more townships have been resurveyed and others will be put under contract, and makes an estimate for the year ending June 30th, 1847, for resurveying 14 townships

west of Saginaw bay.

The report for 1846 says 32 townships north and west of Saginaw bay have been resurveyed, and suggests that there is reason to believe that there are other erroneous surveys in the northern part of the Southern Peninsula, and that examinations should be made.

The report for 1847 again suggests that other townships have

been erroneously surveyed, and urges resurveys.

The report for 1848 says, contracts have been let for examination and resurvey if necessary, of certain old surveys in the vicinity of the Maskego and Manistee rivers, covering about 595 miles of sur-

veys, and calls particular attention to the districts surveyed by John P. Allard and John Brink, which are alleged to be fraudulently returned.

An estimate of \$10,000 for correction of surveys in Michigan for the year ending June 30, 1850, is made.

Extracts from which reports are found on pages 108 and 112 of

the Record.

18. In admitting over the objection of plaintiff, Exhibit 71, being a letter of Richard M. Young, Commissioner of the General Land Office, to Hon. A. Felch, dated February 17, 1849, stating that he had written Hon. S. Breese, chairman of Committee of Public Lands, requesting the appropriation of \$10,000 for the correction of erroneous and defective surveys in southern Michigan, which letter is found in full on page 113 of the Record.

19. In admitting over objection of the plaintiff, Exhibit 72, being a letter dated February 17, 1849, from Richard M. Young, Commissioner, to Hon. S. Breese, requesting the insertion of \$10,000 in the appropriations for the correction of surveys in Michigan, which

letter is found in full on pages 113 and 114 of the Record.

20. In admitting in evidence over the objection of plaintiff, Exhibit 73, being a letter dated July 10, 1849, from Lucius Lyon, surveyor general, to Justin Butterfield, Commissioner, which acknowledges letter of the 4th ult. from Mr. Butterfield's predecessor, advising of appropriations for surveys in Michigan, and containing certain instructions as to resurveys. Commenting on these instructions

thinks it better and less expensive to make entire new surveys rather than attempt joining old lines to new ones. That Mr. Burt and Mr. Risdon were then in the field making examination of surveys, their compensation to be such as the Commissioner sees fit to allow. These examinations the surveyor general considers necessary in order to ascertain what frauds have been committed in the surveys, also as useful in determining how the appropriation of

\$10,000 would be expended. Reports had been received from Mr. Burt up to the 3d of the last month, but none from Mr. Risdon, which letter is found in full on pages 114 to 116

of the Record

21. In admitting in evidence over plaintiff's objection, Exhibit 74, being the published report of the Commissioner of the General Land Office and surveyor general for the year 1849. It recites the employment of Risdon and Burt to make examination of surveys, and that Mr. Risdon had not been heard from, and Mr. Burt had reported on districts surveyed by C. W. Christmas, Henry Nicholson, John Brink, Henry Brevoort, Jr., and others. The account of these examinations is set forth in a table annexed to the report. Based on this report the surveyor general thinks probably there are 150 townships in the Lower Peninsula that will require a resurvey, the cost of which would be \$50,000, and that only a small portion of this could be collected on the bonds of the delinquents. Attention is also called to the delinquencies of S. W. Higgins, a deputy under the then surveyor general, and the suspension of his accounts.

Several tables are annexed showing the particulars of the contracts for the districts examined by Mr. Burt, and estimate of \$20,000 made for the year ending June 30, 1851, for surveys in this district. Extracts from the reports are found on pages 116 to 124 of

the Record.

22. In admitting in evidence over plaintiff's objection, Exhibit 75, being a statement entitled "Resurveys in the State of Michigan," signed by Moses Kelly, clerk, dated "General Land Office, Feb'y 14, 1851," being a general résumé of the correspondence between the Land Office and the surveyor general and the State of Michigan, and the action of Congress in making appropriations from time to time, the principal particulars of which are contained in Exhibits 57 to 74 inclusive, which report is found on pages 124 to 130 of the Record.

23. In admitting over plaintiff's objection, Exhibit 76, being the published report of the Commissioner of the General Land Office

for the year 1850.

This report alludes to the discovery of errors and frauds in the surveys in southern Michigan, and says special instructions have been issued to the surveyor general to employ none but deputies of tried integrity and ability, and additional regulations are made regarding their bonds.

That with the approval of the Secretary of the Interior it had been decided to charge the surveyors general in those States where the office existed with the duty of making up in the first place the lists of lands coming to the States under the "swamp-land act" of September 28, 1850, and that full instructions had been transmitted them for this purpose. Extended comments are made on the state of the resurveys in Michigan, particularly districts surveyed by Mr. Coon and Mr. Pattison in 1839, and Messrs. Sibly and Hodgson the latter districts being in the vicinity of Grand Trayerse.

A recommendation is made for an appropriation of \$10,500 for resurveys for the year ending June 30, 1852. Annexed to the report is a diagram indicating town 18 N, R 3 W, as defectively surveyed. Extracts from the report are found on pages 130 to 134 of

the Record.

24. In admitting in evidence over plaintiff's objection. Exhibit 77, being a letter dated March 5, 1851, from Surveyor General Noble to Commissioner Butterfield. Sends a diagram showing district examined last year, districts examined by Mr. Burt in 1849, resurveys made the past season, and resurveys and corrections made by Wm. A. Burt. Suggests that it is important that defective surveys in Lower Peninsula be adjusted in some manner, either by entire resurvey or by resurvey where original is wanting and re-establishing and correcting the balance. Thinks latter method preferable where sales have been made, but otherwise better make entirely new survey without reference to the old work.

Complying with instructions submits a plan for resurveys for coming season; first, resurvey and correct surveys in Grand Island

district and complete those near Grand Traverse bay; second proceed with other resurveys as far as practicable with a view to completion of all unfinished surveys in the Lower

Peninsula

Commenting on instructions not to subdivide townships unfit for cultivation unless valuable for mineral, says usually cannot tell until survey is made the character of the town. When surveys now contemplated are completed there will be less than 80 towns remaining unsurveyed in the Upper Peninsula. Which letter is found on pages 134 to 136 of the Record.

25. In admitting in evidence over plaintiff's objection, Exhibit 78, being the reports of the Commissioner of the General Land Office and surveyor general for the year 1851, which states that the rectifying of defective surveys for which appropriations have been made, and the survey of islands is the concluding work prior to closing the

surveyor general's office under the act, June 12, 1840.

That the execution of law granting swamp lands is occupying great attention, and in numerous instances it is found difficult to accurately detect the lands from the plats and field-notes of survey. Whenever the selections in any one district have been approved, patents will be issued excluding from the approved lists lands sold or otherwise disposed of.

In giving out contracts the present year special reference was had to closing out the surveys in the Upper Peninsula, so that nothing remains to be done but prosecute the resurveys as authorized by the

lepartment.

Acting under instructions of the General Land Office, the appro-

priations of last year and balance of the previous year had not been expended because certain suits pending against deputies and their bondsmen, who were implicated in the frauds in the public surveys. Surveyor general thinks that, irrespective of the suits, certain resurveys should be continued.

Considerable progress has been made in preparing lists of swamp lands, but some time was consumed in corresponding with the authorities of the State upon the subject of the manner in which the selection should be made. As swamps are not in

large bodies, the work is slow, as nearly every section has to be laid off into 40-acre parcels, and many intricacies arise in drawing lines from the intersections, extracts from which report are found on

pages 137 to 140 of the Record.

26. In admitting in evidence over the objection of the plaintiff. Exhibit 79, being a letter dated February 10, 1852, from Surveyor General Noble to Commissioner Butterfield, inclosing a report of Deputy Surveyor A. S. Wadsworth. The letter acknowledges recent of a letter from the Commissioner of November 25, and incloses a diagram representing the townships already resurveyed. districts reported fraudulent, and states that the balance of the prosecution of the resurveys, should they be ordered without reference to the suits pending in the United States court, would be substantially as proposed in the letter of the 5th of March, 1851. He considers the district west of Saginaw bay of the first importance for resurvey, and continuing with districts near Grand Traverse bay, until all are completed. Commenting on certain rules sent in a letter from the Commissioner under date of June 25, last, he considers them of a restrictive character, and that it does not appear that the present practice of the office was in conflict of the principles therein contained, but thinks no instructions can meet the exigencies of every case, but much must be left to the judgment of the deputy. The employment of codeputies he considers involved with practical difficulties and productive of little good. In the mineral regions, where the solar compass is used, the most of the work must be done in fair weather, and that possibly there an assistant to run random lines might be useful. In disconnecting the examinations from the work of resurveys, the expense to the Government had been increased. In fixing the price for resurvey where the districts are near the coast, the maximum price of \$6 has not been allowed, but has been where the districts were in the in-He recommends that, if a further examination of resurveys are deemed necessary, that they should be disconnected from

416 resurveys or new surveys, and that in townships where sales had been made or lands are occupied, that the portions sold or occupied should be treated as private claims, and the new surveys run up to the boundaries of the parcels so occupied. Letter contains other remarks and comments upon the instructions, explaining why it is necessary to deviate from them from time to time, the whole matter being submitted to the judgment of the department. The report of Mr. Wadsworth bears date December 24, 1851, and purports to give a general view of the character of the country

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running from Saginaw to Grand Traverse, and from Grand River to Grand Traverse, and towards the straits of Mackinaw, purporting to describe character of the timber, of the soil, and the amount of land which appears to be swampy and the amount which appears to be valuable for farming purposes. Some remarks are also made on the character of the climate at different points within this Territory, which letter and inclosure are found on pages 140 to 147 of the Record.

27. In admitting in evidence over plaintiff's objection, Exhibit 80, being a letter from Butterfield, Commissioner, to Noble, surveyor general, dated March 8, 1852, acknowledging a communication of the 10th ult. by the hands of Mr. Frost, the chief clerk, on the subject of the resurveys in this State, and divides the matter of the resurvey of the State into two classes, first, incomplete surveys where a portion only of the lines of a township are found to be surveyed, but where some lines have been run and corners established, such portions as can be made available by retaining all remaining undisturbed. The second class are fraudulent surveys. where there is no evidence found of the good intent on the part of the deputy to comply with this contract, and an entire absence of the marks and monuments to designate corners, and no lines trace-In this class of cases the lines and corners found are to be obliterated, except where parcels are occupied and the occupant insists on having the monuments preserved, in which case his requests shall be respected. Otherwise they are to establish

new lines and new monuments, the work to be inspected before payment, to the satisfaction of the surveyor general, these inspections to be paid for at the *per diem* allowance, which

exhibit is found on pages 147 to 149 of the Record.

28. In admitting in evidence over plaintiff's objection, Exhibit 81, being the published reports of the Commissioner of the General Land Office and surveyor general for the years 1852 to 1858, inclusive.

The reports for 1852 state the office labors of the surveyor general had been rendered onerous by the duty of selecting the swamp lands, and further that the descriptive notes often did not show all the swamp lands by reason of the surveys being made at dry seasons,

or when the ground was frozen.

Much difficulty was also experienced by reason of numerous conflicts; no general suspension of sales being contemplated by the act, numerous entries were made of lands claimed by the State. To relieve this difficulty, recommends that authority be given to pay the money over to the State upon a proper relinquishment by the State, or where warrants or scrip had been used to authorize the State to locate a like amount elsewhere.

The lists returned are compared with the tract books, and where parcels disposed of prior to the passage of the act, they are annulled, and where after are suspended. The selections are then posted, and lists and diagrams prepared and sent to the governors of the

several States.

The Commissioner estimates \$3,000 for resurveys for the year

ending June 30, 1854.

The surveyor general recounts difficulties in making up the swamp-land list, and says those for the Kalamazoo and Ionia districts have already been forwarded, those for the Detroit, Flint and Sault St. Marie districts are in the hands of the register, and the Saginaw list has been returned from the register with the annotations, and will soon be forwarded.

Thinks changes in the lists or new lists will be required in some towns in the Grand River and Saginaw districts

owing to the resurveys.

Of the 59 towns contracted for resurvey last season, 39 have been completed in a satisfactory manner, and confirms his opinion previously expressed, that representations of the old surveys that the lands were swampy and indifferent was incorrect, that it was found in some instances, that where the old survey set down lakes covering hundred of acres, none existed.

He reports that upwards of 60 towns east of the meridian are

believed to be fraudulent.

The report for 1853 states that the delivery of patents is retarded by the adjustment of the swamp grant, owing to the imperfections of the field-notes, the numerous conflicts and complexity of the questions involved, and deems further legislation required to facilitate the adjustment. The matter also interfered with the adjustment of the recent railroad grant, the swamp land having first to be determined. An estimate of \$20,160 is made for resurveys for

the year ending June 30, 1855.

The surveyor general states that in pursuance of an appropriation of \$5,000 for the correction of surveys in the Upper Peninsula, he appointed George H. Cannon for that work. The work of Wm. Hemmingway in 1851 had been examined and found defective. Mr. Cannon completed the work on four of the towns and then thought it advisable to consult with the surveyor general as to the balance, owing to its complex character. Mr. Cannon will be given instructions to proceed with the balance in the spring. In the Lower Peninsula, of the townships contracted for last season, ten were left uncompleted.

An inspector of surveys has examined districts north of the third correction line and west of the meridian, and that in those surveyed by James H. Mullett and John Hodgson, resurveys will be necessary. Makes some comments on errors found from time to time in the old surveys as to the character of the land described and inability to find the lines, and makes the same estimate for resurveys as is

incorporated in the report of the Commissioner.

The report for 1854 states the surveyor general is pursuing the only plan by which the evils resulting from the fraudu-

lent surveys can be overcome.

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The surveyor general reports that he has estimated for the resurvey of 30 townships in the Lower Peninsula and 13 in the Upper, and says it will be necessary to make other surveys than those now estimated for, but they will be left until the next season.

The making up of the lists of swamp lands has been completed with the exception of the towns the surveys of which were but recently approved.

The estimate for surveys in the Lower Peninsula for the year end-

ing June 30, 1856, is \$10,800.

In the report for 1855 the surveyor general states that immediately on being advised of the passage of the appropriation of August 4, 1854, continuing resurveys, he immediately offered contracts, but was only able to make a contract with Mr. Cannon for the resurvey of 17 towns, but he was prevented from work by the cold, boisterous weather, and resumed work in the spring, when also contracts were let for the resurvey of 56 towns.

In statement I, attached, under date of November 1, 1855, Chapman, surveyor general, says it is intended to contract the work of resurveys in towns 18, 19 and 20 north, ranges 1, 2 and 3 west, as fast as appropriations will permit. Statement K purports to exhibit the work of the office still to be completed before transferring the

records to the State.

He makes an estimate for resurveys for the year ending June 30,

1857, of \$9,750.

The report for 1856 says it has been determined to complete the resurveys of about 75 towns, the greater portion of which are included in outstanding contracts, and it is contemplated that the records can be transferred to the State by September 30, 1857.

The surveyor general expresses a similar opinion as to closing the office and transferring the records, but desires to be understood that he thinks there are yet districts which should be resurveyed.

The report for 1857 states that the act of March 3d, 1857, bad ended many of the conflicts in the adjustment of the swamp grant, which was now rapidly progressing.

It is recommended that a limit be fixed within which the swamp

selections must be made.

The adjustment of the railroad grants also involved a great amount of labor. The proceeding was as follows: The lands within the railroad limits are withdrawn from sale; after the grants have been accepted by the States, they were usually conferred upon some company, which latter caused a map to be filed in the land office, duly approved by the governor.

If the line laid down is in accordance with the act of Congress, it

is then laid down in the official township plats.

From this and the ledgers or tract books, the adjudications are made and the granted lands listed, and the balance returned to market.

As to surveys thus reported that the original surveys of islands in the western part of the Lower Peninsula had been made, the surveyor general's office transferred from Detroit to St. Paul, Minn., and the greater portion of the archives transferred to the Michigan State authorities.

Attached to this report are statements stating that plats of 18 north, 3, 4 and 5 west, sent the Commissioner February 12, 1857,

but none sent register, and another table showing completion of

Cannon's surveys.

The report for 1858 refers to preceding reports for the method of adjustment of railroad grants, and that sales, locations, pre-emptions and swamp selections are entered on ledgers, and tested before preparation- of lists are made; all of which involves great labor, and many and conflicting interests arise for examination.

Extracts from these reports are found on pages 149 to 168 of the

Record.

29. In admitting in evidence over the objection of the plaintiff, Exhibit 82, being a letter dated June 11, 1847, from Lucius Lyon, surveyor general, to Richard N. Young, Commissioner, stating that in compliance with a request for a computation of the number of acres of swamp land in each district, but a mere approximation to accuracy can be given, as the old surveys show the swamp only at the intersection with the lines of survey. Not having the Ohio surveys in his possession, he will confine his estimates to Indiana and Michigan. The letter is set out in full on

pages 168 and 169 of the Record.

30. In admitting in evidence over the plaintiff's objection, Exhibit 83, being a letter dated June 7, 1853, from John Wilson, Commissioner, to the surveyor general at Detroit, stating that in adjusting the swamp selections in the Grand River district a difficulty had arisen over the supplemental list dated December 8, 1852. The surveyor general, under date October 4 last, had been instructed to make out these lists in lieu of the former ones. Which in the heading of the list was evidently lost sight of. In certain towns the selections are the same, while in others the supplemental list contains fewer selections. The Commissioner inquires which is to govern, the original or the supplemental list? Whether the supplemental list is to — considered corrective or to be taken in lieu of the original. The letter is to be found in full on pages 169 and 170 of the Record.

31. In admitting in evidence over plaintiff's objection, Exhibit 84, being a letter dated July 29, 1853, from John Wilson, Commissonioner, to the register at Detroit, transmitting certified copy of approved list No. 1 in his district, and containing instructions as to how the entries concerning should be made in the tract book and in the plats of his office, and to advise the Commissioner of any errors, etc., he may find, which letter is found on pages 170 and

171 of the Record.

32. In admitting in evidence over the plaintiff's objection, Exhibit 85, being a letter dated July 30, 1853, from John Wilson, Commissioner, to the register at!Detroit, transmitting list A.

422 No. 1, of his district, showing selections of swamp land rejected as being disposed of prior to the grant, and instructing him as to the manner of making the entries in connection of the entries made from the surveyor general's list, on the books of the office, which letter is found on pages 171 and 172 of the Record.

33. In admitting in evidence over plaintiff's objection, Exhibit 86, being a letter dated September 5, 1863, from J. M. Edmunds,

Commissioner, to the register at Ionia, Michigan, stating that certain descriptions were confirmed selections, and would be approved to the State; that certain others though selected would not be approved, as they did not appear in the list subsequently made by the surveyor general to supersede the previous list, but they must be restored to market in the usual way before they will be subject to private entry, which letter is found on page 172 of the Record.

34. In admitting in evidence over plaintiff's objection, Exhibit 87, being a letter dated September 19, 1854, from John Wilson, Commissioner, to Chapman, surveyor general, Detroit, inclosing an affidavit of O. M. Barnes, relating to the character of certain lands in the Ionia district, and that Mr. Barnes had been advised that if the swampy character of the land was doubtful, he would be permitted to contest the claim of the State, and that from an examination of the plats and field-notes the Commissioner thinks there is

doubt, which letter is found on page 173 of the Record.

35. In admitting in evidence over plaintiff's objection, Exhibit 88, being the reply of Surveyor General Chapman, dated September 27, 1854, to the preceding letter, stating that in determining the swamp lands enuring to the State the instructions of November 21, 1850, had been followed, the State having accepted the field-notes and plats as the basis of selections. That this course was followed in making up the lists. In the case in question there are three ways of drawing the lines, which he illustrates by a diagram annexed to the letters. The selections are based on a survey

423 made in 1826, and the land may then have been of the character granted. Some defects in the affidavit of Mr. Barnes are pointed out, and on the whole is of the opinion that the swamp selection is correct, which letter is found on pages 175 and 176 of

the Record.

36. In admitting in evidence over plaintiff's objection, Exhibit 89, being a letter dated October 6, 1854, from John Wilson, Commissioner, to Chapman, surveyor general, acknowledging receipt of the letter (the preceding assignment) stating none of the three ways of connecting the swamps as indicated in the diagram appear to be proper. In this case he has decided to give Mr. Barnes an opportunity of furnishing evidence as to the character of the land in question, and indicates the character of the testimony to be furnished, which letter is found on pages 176 and 177 of the Record.

37. In admitting in evidence over plaintiff's objection, Exhibit 90, being a letter dated September 18, 1852, from Surveyor General Noble to Commissioner Butterfield, calling attention to the purchase of a tract by Mr. Bartlett of the register at Kalamazoo, prior to the receipt of the swamp lists. That nothing had been heard from the register at Detroit, Flint and Sault Ste. Marie, in refer-

ence to the lists in their hands for annotation.

A supplemental list embracing all new surveys will be furnished the Commissioners at an early day, and inquires in regard to towns resurveyed, which will govern, the old or new surveys, which letter is found on pages 177 and 178 of the Record.

38. In admitting in evidence over plaintiff's objection, Exhibit

91, being a letter dated October 4, 1852, from John Wilson, Commissioner, to Noble, surveyor general, requesting him to re-examine his notes and plats as to the tract desired by Mr. Bartlett, and if swamp advise him that the same is not subject to entry and if not to report to the Commissioner's office, and to do the same as to the parcels sold by the register at Kalamazoo. That in making out

supplemental lists he should make three copies, one for himself, the register and for the Commissioner; that in towns resurveyed he should make new lists of selections, designating the lists as being in lieu of the former ones, which letter is found

at pages 178 and 179 of the Record.

39. In admitting in evidence over plaintiff's objection, Exhibit 92, being a letter dated June 24, 1853, from Surveyor General Chapman to Wilson, Commissioner, acknowledging receipt of a letter of June 7: that in making up the supplemental list it should have been stated at the head of the list or in the letter of transmissal, that it was in lieu of the former list, that such lists were made up without reference to the old lists or plats. The question as to which list should govern he supposed would be decided by the Commissioner, but thinks the supplemental list should govern, and that hereafter it will be so considered, which letter is found on pages 179 and 180 of the Record.

40. In admitting in evidence over objection of plaintiff, Exhibit 93, being a letter dated October 29, 1853, Surveyor General Chapman to Commissioner Wilson, transmitting supplemental list No. 2, Grand River district, which letter is found on pages 180 and 181 of

the Record.

41. In admitting over plaintiff's objection, Exhibit 94, being a letter dated November 7, 1853, Commissioner Wilson to Surveyor General Chapman, acknowledging receipt of the list contained in the foregoing letter, and that the original list will be altered to conform to it, which letter is found on page 181 of the Record.

42. In admitting in evidence over plaintiff's objection, Exhibit 95, being a letter dated January 31, 1855, Surveyor General Chapman to Commissioner Wilson, transmitting list of swamp lands in Cheboygan land district, surveyed and platted up to January 15, 1855. With this list he believes descriptions of swamp lands in every township in the State had been transmitted the Commissioner, and asks if it will be proper to furnish new lists as heretofore of lands hereafter resurveyed, which letter is found on pages

181 and 182 of the Record.

425 43. In admitting in evidence over plaintiff's objection, Exhibit 96, being a letter dated February 12, 1855, Wilson Commissioner, to Chapman, surveyor general, acknowledging receipt of the lists contained in the last letter, and advising him that it will be necessary to continue to furnish the lists as heretofore, which letter is found on page 182 of the Record.

44. In admitting in evidence over plaintiff's objection, Exhibit 97, being the published report of the commissioner of the Michigan State land office for the year ending September 30, 1852, which states that no lists had yet been received of the swamp lands; gives

a letter from the General Land Office, dated November 2, 1852, on the subject, which, referring to an application to have certain lands approved in advance of the regular lists, which lands were in three different land districts, states that a rule had been established not to take action on isolated tracts without taking action on the entire list in that district, as it would retard the final adjustment, but the matter of selections would be acted upon at the earliest possible period. Extracts from which reports are found on pages 183 and 184 of the Record.

45. In admitting in evidence over plaintiff's objection, Exhibit 98, being a letter dated January 20, 1854, Commissioner Wilson to Governor Parsons of Michigan, requesting that he cause to be erased from approved list No. 1, Kalamazoo district of swamp lands, a certain tract erroneously approved, the lands being sold in 1836, to enter in place of it the tract intended to be approved, and to advise the General Land Office of the corrections, which letter is found on page 184 of the Record.

46. In admitting in evidence over plaintiff's objection, Exhibit 99, being a letter dated January 30, 1854, Governor Parsons to John Wilson, Commissioner, acknowledging the preceding letter and advising that the corrections had been made, which letter is

found on page 185 of the Record.

47. In admitting in evidence over plaintiff's objection, Exhibit 100, being a letter dated February 24, 1854, Commissioner Wilson to Governor Parsons, requesting him to cause the

copy of approved list No. 4, Genesee district, swamp lands, to be corrected by erasing certain descriptions, and in place thereof inserting certain others, and advise the General Land Office if done, which letter is found on pages 185 and 186 of the Record.

48. In admitting in evidence over plaintiff's objection, Exhibit 101, being a copy of Ionia approved list No. 4, from the State land office, showing erasures in the list with reference to the Commissioner's letter of February 24, 1854 (Exhibit 100, p. 185), which

list is found on pages 186 to 188 of the Record.

49. In admitting in evidence over plaintiff's objection, Exhibit 102, being a letter dated March 31, 1854, from Commissioner Wilson to Governor Parsons, requesting him to cause certain corrections to be made in the copy of Genesee approved list No. 1, by erasures and insertion of descriptions, and as to certain others, inasmuch as they had been disposed of by the General Government subsequent to September 28, 1850, to mark them "Suspended," and to advise the General Land Office of the corrections, which letter is found on pages 188 to 189 of the Record.

50. In admitting in evidence over plaintiff's objection, Exhibit 103, being Genesee approved list No. 1, from the State land office, showing the corrections and aunotations requested in the Commissioner's letter, March 31, 1854, with reference to the same, which

list is found on pages 190 to 192 of the Record.

51. In admitting in evidence over plaintiff's objection, Exhibit 104, being a letter dated April 25, 1854, from Commissioner Wilson to Governor Parsons, requesting him to cause the copy of Genesee

approved list No. 2 to be corrected by erasing certain descriptions, adding others and changing other items, and to advise the General Land Office of the corrections, which letter is found on pages 192 and 193 of the Record.

52. In admitting in evidence over plaintiff's objection, Exhibit 105, being Genesee approved list No. 2, from the State land office,

showing the erasures, corrections and additions requested in the Commissioner's letter of April 25, 1854 (Exhibit 104), which list is found on pages 194 to 196 of the Record.

53. In admitting in evidence over plaintiff's objection, Exhibit 106, being a letter dated May 19, 1854, from Commissioner Wilson to Governor Parsons, requesting that certain erasures, corrections and annotations be made on the copy of Genesee approved list No. 3, and to report the same to the General Land Office, which letter is found on page 197 of the Record.

54. In admitting in evidence over plaintiff's objection, Exhibit 107, being Genesee approved list No. 3, showing the erasures, corrections and annotations requested by the Commissioner's letter of May 19, 1854, with reference to the same, which letter is found on

pages 198 to 200 of the Record.

55. In admitting in evidence over plaintiff's objection, Exhibit 108, being a letter from Commissioner Wilson to Governor Parsons, dated July 1, 1854, requesting that certain corrections be made in the copy of the approved list No. 3, Sault St. Marie district, and that the General Land Office be notified of the corrections, which letter is found on page 200 of the Record.

56. In admitting in evidence over plaintiff's objection, Exhibit 109, being a letter from Governor Parsons to Commissioner Wilson, dated July, 1854, which acknowledges receipt of the letter of Commissioner Wilson of July 1, 1854 (Exhibit 108), and advises him that the corrections requested have been made, which letter is found

on page 201 of the Record.

57. In admitting in evidence over plaintiff's objection, Exhibit 110, being surveyor general's list No. 1, Grand River district, from the State land office, so far as it relates to towns. 18 north, 3 and 4 west, which exhibit is found on pages 201 to 206 of the Record.

58. In admitting in evidence over plaintiff's objection, Exhibit
111, being approved list No. 1, Ionia district, from the State land office of Michigan, so far as it relates to towns. 18 north, 3
428 and 4 west, which exhibit is found on pages 207 to 211 of the Record.

59. In admitting in evidence over plaintiff's objection, Exhibit 113, being the patent of the United States to the State of Michigan, known as Ionia No. 2, so far as relates to the lands in town 18 north and 4 west, which exhibit is found on pages 212 to 214 of the Record.

60. In admitting in evidence over plaintiff's objection, Exhibit 114, being fields-notes of the resurvey of sections in township 18 north, range 3 west, involved in the declaration in this cause, which exhibit is found on pages 214 to 228 of the Record.

 In admitting in evidence over plaintiff's objection, Exhibit 39-331 115, being a letter from Surveyor General Noble to Commissioner Butterfield, dated April 21, 1852, referring to the letter of the Commissioner of April 13. States that the certificate in the Kalamazoo list does not appear to admit of doubtful construction, and incloses a new certificate for the Grand River list to be substituted for the original, and that the lists as near as practicable be made up strictly in accordance with the instructions of the Commissioner; that the remaining lists would be made up leaving out the tracts sold prior to September 28, 1850, which letter is found on page 229 of the Record.

62. In admitting in evidence over plaintiff's objection, Exhibit 116, being a letter from Alexander F. Bell, register of Ionia land office, to the Commissioner of the General Land Office, dated September 23, 1854, inquiring whether lands appeared to have been on the maps of the old survey to have been selected by the surveyor general as swamp lands, and not appearing on the maps of the resurvey and in the approved list as swamp lands, are subject to private entry at his office, which letter is found on page 230 of the

Record.

63. In admitting in evidence over plaintiff's objection, Exhibit 117, being a letter from Commissioner Wilson to the register of the land office at Ionia, dated October 3, 1854, and stating that he should regard all selections by the surveyor general as valid until furnished by him with lists designated, "In lieu of the originals in townships resurveyed and platted," and where lands have been approved according to the old plats, no action could be taken by the register until the claim of the State has been re-

jected, which letter is found on pages 230 and 231 of the Record.

64. In admitting in evidence over plaintiff's objection, Exhibit 118, being the published reports for the year ending November 30, 1856, by the commissioner of the State land office, stating that patents had been received for all the swamp lands in the State, except those in the Ionia land district, comprising about 1,200,000 acres, which patents had been delayed by reason of the resurveys. Referring to the application for the purchase of particular descriptions, he says, they have been denied because no valid sale could be made until the State's title had been confirmed by a patent from the United States. Speaking of the character of these lands, he says, It is well known that many tracts are now considered among the best farming lands in the State, and others valuable for timber. Extracts from which report are found on pages 231 and 232 of the Record.

65. In admitting in evidence over plaintiff's objection, Exhibit 119, being a letter from Commissioner Wilson to Governor Bingham, dated February 24, 1855, requesting the suspension of action on Ionia approved lists Nos. 2 and 3, because surveyor general had transmitted to the Commissioner certain lists in the Cheboygan district in townships resurveyed and platted, which lists he states, "abrogates and supersedes all lists of swamp lands heretofore made of the townships contained in it," giving a list of the towns affected, which letter is found on pages 232 and 233 of the Record.

66. In admitting in evidence over plaintiff's objection, Exhibit 120, being the report for the year ending November 30, 1855, of the commissioner of the State land office, which states that no sales or public offering had been made during the past year 430 of the lands embraced in the lists heretofore received, as pat-

ents had not been issued for the same. The patents that had been received embraced lands in the Detroit, Genesee and Kalamazoo districts. Where conflicts had arisen by reason of the sale of the lands subsequent to September 28, 1850, by the General Land Office, such descriptions had been omitted from the patents, and the purchasers had filed applications with the State, under the State act- of February 14, 1853, and February 15, 1855, to purchase lands, but the State had been unable to confirm their title. That a list of the sales made by the State had been sent to Washington for the purpose of comparison under the act of Congress of March 2, 1855, and that the office was advised that the State, having accepted the grant on the bases of the notes of survey, no further proof would be required to obtain the benefits of the act of Congress of March 2d, 1855. Referring to the fact of the resurveys being then prosecuted in the Ionia district, he is unable to state what material difference will be made thereby. Extracts from which reports are found on pages 233 to 235 of the Record.

67. In admitting in evidence over plaintiff's objection, Exhibit 121, being a letter from Commissioner Edmunds, dated June 18, 1864, referring to certain selections, stating that they were made from the field-notes of the old surveys, and most of the selections in those towns were approved and patented to the State on the old surveys prior to the receipt of the selections based on the new surveys. Supplemental list D being such a list. And the office had decided that, having acted upon one, they would ignore the other, and, therefore, the original list based on the old surveys should govern in those townships, which letter is found is found on pages

235 and 236 of the Record.

68. In admitting in evidence over plaintiff's objection, Exhibit 122, being the report of the Commissioner of the General Land Office for 1864, calling attention to the discrepances in swamp-land selections of Michigan, arising from the resurvey of certain town-

ships, and the fact that prior to the reception of the lists based on the resurveys, approvals and patents had been made 431 on the old surveys, and suggests that, in order to remove the difficulty, the State relinquish her title to the tracts accrued under the old surveys, taking lands described as swamp in the new sur-Extracts from which report are found on pages 237 of the vevs. Record.

69. In admitting in evidence over plaintiff's objection, Exhibit 123, being the plat or resurvey of township 18 north, range 3 west, in the State of Michigan, which plat is found opposite page 237 of the Record.

70. In admitting in evidence over plaintiff's objection, Exhibit 124, being surveyor general's supplemental list No. 3, Grand River district, from the State land office, so far as relates to towns. 18 north, ranges 3 and 4 west, which list is found on pages 238 to 240 of the Record.

71. In admitting in evidence over plaintiff's objection, Exhibit 125, being a letter from Surveyor General Emerson to Commissioner Hendricks, dated May 12, 1858, transmitting supplemental lists of swamp selections in the Cheboygan, Grand River and Saginaw land districts of townships resurveyed and platted since the dates of the last supplemental lists, which lists complete the swamp-land lists, with the exception of certain towns yet requiring corrections, which letter is found on page 241 of the Record.

72. In admitting in evidence over plaintiff's objection, Exhibit 126, being a letter from Commissioner Hendricks to Surveyor General Emerson, dated May 20, 1858, acknowledging receipt of the lists referred to in the letter of May 12, 1858 (Exhibit 125), which

letter is found on pages 241 and 242 of the Record.

73. In admitting in evidence over plaintiff's objection, Exhibit 127, being approved list No. 10, Ionia land district, from the State land office, so far as it relates to towns 18 and 28 north, range 3 west, which exhibit is found on pages 242 to 244 of the Record.

74. In admitting in evidence over plaintiff's objection, Exhibit 128, being a letter from Commissioner Edmunds to the governor of Michigan, dated May 26, 1866, transmitting a copy of approved list No. 10, Ionia district, and requesting the governor to transmit his requests for patents for the lands contained in it, which letter is found on pages 244 and 245 of the Record.

75. In admitting in evidence over plaintiff's objection, Exhibit 129, being a letter from Governor Crapo of Michigan to Commissioner Edmunds, dated May 31, 1866, acknowledging the receipt of approved list No. 10, Ionia district, and requesting that patents might issue for the same, which letter is found on page 245 of the

Record.

76. In admitting in evidence over plaintiff's objection, Exhibit 130, being patent of the United States to the State of Michigan, No. 20, Ionia district, so far as it relates to townships 18 and 28 north, range 3 west, which patent is found on pages 246 to 248 of the Record.

77. In admitting in evidence over plaintiff's objection, Exhibit 131, being a letter from Commissioner Drummond to the governor of Michigan, dated March 25, 1873, acknowledging receipt of a letter of the governor's of the 4th inst., asking that certain lands be patented to the State as swamp lands, and advising him that the records show the lands to have been selected in 1852, and shortly afterwards approved, but never patented to the State. Resurveys having been ordered for the townships referred to, new lists were reported which do not contain the descriptions mentioned, and are therefore not recognized by the office as swamp selections. Those in the townships selected by the resurvey are suspended because contained in an Indian reservation, which letter is found on pages 248 and 249 of the Record.

78. In admitting in evidence over plaintiff's objection, Exhibit 132, being a letter from Commissioner State Land Office Clapp to

Commissioner Burdett, dated April 15, 1875, transmitting a list of swamp and overflowed lands, contained in supplemental list C,

Cheboygan district, of the townships resurveyed, calling attention to the removal of the reservation for Indian purposes, and requesting that the list of lands be approved and patented to the State at an early day, which letter is found on pages

249 and 250 of the Record.

79. In admitting in evidence over plaintiff's objection, Exhibit 133, being letter from Acting Commissioner Curtis to the governor of Michigan, dated November 10, 1875, acknowledging the receipt of a letter of October 28, calling attention to a list of lands in townships 35 and 36 north, range 3 west, and stating that they being found free from conflict, they had been submitted to the Secretary of the Interior for approval to the State as swamp lands, which letter is found on page 250 of the Record.

80. In admitting in evidence over plaintiff's objection, Exhibit 134, being approved list No. 22, Traverse City district, the same covering towns 35 and 36 north, range 3 west, which exhibit is

found on pages 251 to 254 of the Record.

81. In admitting in evidence over plaintiff's objection, Exhibit 135, being a patent from the United States to the State of Michigan, No. 35, covering descriptions in towns 35 and 36 north, range 3 west, which exhibit is found on pages 255 to 257 of the Record.

82. In admitting in evidence over plaintiff's objection, Exhibit 136, being a letter from Commissioner of the State Land Office Clapp, to Commissioner Drummond, dated April 30, 1874, transmitting for examination a list of lands contained in supplemental list No 3, Grand River district, in townships resurveyed, requesting the approval of each parcel, and that patents be issued; or, if that cannot be done, the State may receive indemnity therefor. The lists inclosed covers selections in towns, 18 north and 3 west, and a large number of other towns, which exhibit is found on pages 258 to 263 of the Record.

83. In admitting in evidence over plaintiff's objection, Exhibit 137, being a letter from Commissioner Burdett to Commissioner of the State Land Office Clapp, dated June 15, 1874, acknowl-

edging the receipt of a list contained in a letter of Commissioner Clapp, of April 30, 1874 (Exhibit 136), and stating that as to certain townships the greater part of the selections were made and approved under the old survey, and as to those the old selections must govern. That as to certain other of the descriptions a portion had been located by land warrants, and others had been approved to the State for railroad and canal purposes, and others sold prior to the swamp grant of September 28, 1850, and that other tracts appear to be vacant and would be submitted to the Secretary of the Interior for his approval, which letter is found on pages 263

to 267 of the Record.

84. In admitting in evidence over plaintiff's objection, Exhibit 138, being a letter of Clapp, commissioner of the State land office, to Commissioner Burdett, dated August 12, 1875, referring to the letter of Commissioner Burdett, dated June 15, 1874 (Exhibit 137).

requesting that the lands noted in the Commissioner's letter as appearing vacant might be submitted for approval without further delay, and inclosing a list of lands, which letter is found on page

267 and 268 of the Record.

85. In admitting in evidence over plaintiff's objection, Exhibit 139, being a letter from Acting Commissioner Curtis to Commissioner of the State Land Office Clapp, dated September 13, 1875 acknowledging receipt of Commissioner Clapp's letter of August 12 1875 (Exhibit 138), advising him that certain tracts were included in Ionia list No. 20, and that certain other of the tracts were submitted to the Secretary of the Interior for approval on the 10th inst., which letter is found on pages 269 and 270 of the Record.

86. In admitting in evidence over plaintiff's objection, Exhibit 140, being copy of approved list No. 20, Ionia district, so far as relates to certain descriptions in town. 18 north, 3 west, which list is

found on pages 270 and 271 of the Record.

87. In admitting in evidence over plaintiff's objection, Exhibit 141, being a patent from the United States to the State of Michigan, No. 34, for certain swamp lands in town 18 north

3 west, the same lands contained in Exhibit 140, which patent

is found on pages 271 and 272 of the Record.

88. In admitting in evidence over plaintiff's objection, Exhibit 142, being a certificate of the commissioner of the State land office, dated June 16, 1892, from which it appears that certain lands in towns. 18 north, ranges 3 and 4 west, and other towns are not found in any approved list, nor included in any patent of the United States to the State of Michigan on file in the State land office; and further, that no swamp lands in township 18 north, range 3 west, are included in any approved list on file in that office, except Ionia No. 1, No. 10 and No. 20, or in any patent, except patents No. 20 and No. 34, and reciting similar facts as to other lands not involved in the declaration in this case. Which certificate is found on pages 273 and 274 of the Record.

89. In admitting in evidence over plaintiff's objection, Exhibit 143, being a letter of the register and receiver of the United States land office at Detroit to the commissioner of the State land office, dated September 10, 1877, transmitting a copy of a letter from the Commissioner of the General Land Office to the register and receiver, dated September 6, 1877, and advising the State that it has 60 days to appeal from the decision of the department contained in this letter of the Commissioner referring to certain tracts of land included in homestead entries found in conflict with the claim of the State. Says that the lands were embraced in supplemental list D, and stating that the lands were in towns approved and patented, based on the old survey, and that for that reason the claim of the State to the particular parcels had been rejected, which letter is found on pages 274 to 276 of the Record.

90. In admitting in evidence over plaintiff's objection, Exhibit 144, being a letter dated June 26, 1880, from Commissioner Williamson to the governor of Michigan, advising him of the receipt

of a letter of the 17th inst. inclosing a list of lands in township 24 north, range 1 west, claimed as belonging to the State under the swamp grant, and stating that the list referred to was superseded by lists made on the resurveys, and as these lists do not include the lands claimed by the State, they were not recognized as swamp selections, and that the land on the oddnumbered sections had all been certified to the State for railroad purposes, which letter is found on pages 276 and 277 of the Record.

91. In admitting in evidence over plaintiff's objection, Exhibit 145, being a letter dated July 27, 1881, from Governor Jerome to Secretary of the Interior Kirkwood, inclosing a list of lands which had been approved to the State, and requesting patents therefor, which letter and the list inclosed is found on pages 277 and 278 of

the Record.

92. In admitting in evidence over plaintiff's objection, Exhibit 146, being a letter from Commissioner McFarland to the governor of Michigan, dated August 27, 1881, acknowledging receipt of the letter of Governor Jerome of July 27, 1881 (Exhibit 145), stating in reply that the records of the office showed that certain of the descriptions had been selected and approved as swamp lands, but before patent had been issued resurveys had been made and a new list prepared, in which the parcels do not appear as swamp lands, and therefore they could not be treated as such. That another description had already been patented to the State, erroneously, as being land confirmed to purchasers under the United States, under the act of March 3, 1857, and that certain of the remaining tracts would be patented to the State at an early day, which letter is found on pages 278 and 279 of the Record.

93. In admitting in evidence over plaintiff's objection, Exhibit 147, being a letter from Governor Jerome to Commissioner of the General Land Office, dated March 20, 1882, inclosing a letter from

the commissioner of the State land office, together with the list of lands for which a patent was requested, a letter of the commissioner of the State land office, dated March 18, 1882, asking the governor to request patents on the inclosed, which letter and its inclosures are found on pages 280 and 281 of the Record.

94. In admitting in evidence over plaintiff's objection, Exhibit 148, being a letter from Commissioner McFarland, to the governor of Michigan, dated March 29, 1882, acknowledging receipt of the governor's letter of the 20th inst. (Exhibit 147) stating that certain of the descriptions had been sold by the General Government prior to 1850, that others of the tracts are reported as swamp selections, May 12, 1858, were November 12, 1867, selected for the Jackson, Lansing & Saginaw railroad for railroad purposes, and the State's claim to the same lands under another grant would not be recognized. That another parcel does not appear on the plats of the Government survey; that other parcels have not been selected as swamp lands, and that the remaining parcels do not appear in the lists found on the resurveys in the respective townships, and for that reason the request of the governor cannot be complied with, which letter is found on pages 281 and 282 of the Record.

95. In admitting in evidence over plaintiff's objection, Exhibit 149, being a letter from Commissioner Sparks to the register and receiver at Detroit, dated March 25, 1887, stating that certain descriptions upon which homestead entries had been made were suspended for conflict with apparent claim of the State of Michigan under the swamp grant. Which descriptions were contained in supplemental list D, transmitted after the resurveys in those towns, but in which towns the greater portion of lands had been carried into patents based on the old survey prior to the reception of the supplemental list, and that therefore the selections in the supplemental list would not be recognized, the claim of the State based on the supplemental list would be held for rejection, and they are requested to notify the State authorities of the usual time for appeal. which letter is found on pages 283 and 284 of the Record.

96. In admitting in evidence over plaintiff's objection, 438 Exhibit 150, being a letter from Commissioner Sparks to register and receiver at East Saginaw, dated November 8, 1887, stating that as to a certain description embraced in a cash entry at that office it appears to be claimed by the State of Michigan as swamp lands, which claim is founded on a selection made December 24, 1852, subsequent to which time a resurvey was made and a new list prepared, which did not contain the description involved. The field-notes do not show the parcels to be swamp and overflowed within the meaning of the grant, not being approved or patented to the State, claim of the State is held for rejection, and the register and receiver are requested to notify the governor of the State, which letter is found on page 285 of the Record.

97. In admitting in evidence over plaintiff's objection, Exhibit 151, being a letter from Commissioner Wilson to the register and receiver at Ionia, dated January 30, 1868, and Exhibit 151 A, being a letter from Commissioner Wilson to the register and receiver at

Ionia, dated July 30, 1869.

Exhibit 151 being the decision of the Commissioner rejecting the entries of Addison P. Brewer and others for lands in 18, 19 and 20 north, range 3 west, their entries being contested by the Flint & Pere Marquette and Jackson, Lansing & Saginaw Railroad Companies, and Messrs. Remick and Merrill. These lands were selected by the State in 1852 as swamp lands, and in 1857 a resurvey was made of the townships, and a new list prepared in 1858. The railroad companies claim the land under the act of Congress of June The lands in dispute were within the fifteen-mile limits of the several roads, and the indemnity selections were certified to the roads in 1859, 1862 and 1864. Mr. Remick in 1854 and Mr. Merrill in 1863, had applied to enter the lands, at the United States Land Office. The applications of Brewer and others were made at the United States Land Office in 1866. The Commissioner holds that at the time of the adjustment of the railroad grant, and

at the time of the application for entry of Messrs. Remick and Merrill, the selections of the State in 1852 operated as a withdrawal of the lands from public entry, and not subject to disposal under the terms of the railroad grant. The lands being resurveyed and a new list made, the selections of the State must be considered as having been relinquished, and the lands should now be restored to market after public notice and the location canceled. Parties were allowed thirty days in which to appeal to the Secre-

tary of the Interior.

Exhibit 151 A advises the register and receiver of the affirmation of the decision of the Commissioner by the Secretary of the Interior, and directs them to return the scrip, cash or warrants upon which the entries were made to the proper parties, note the cancellation of the entries on the book of the office, and to offer the lands at public sale in the usual manner, which exhibits are found on pages

286 to 291 of the Record.

98. In admitting in evidence over plaintiff's objection, Exhibit 152, being a letter from W. R. Wood, chief clerk of the surveyor general's office, dated May 13, 1858, stating the surveyor general left day before with maps, field-notes, etc., of the surveys in Michigan to be transferred to the State authorities, and that he had mailed to the Commissioner's address the original supplemental lists in the Cheboygan, Grand River and Saginaw land detricts. made up from the resurveys since the date of the last supplemental lists for those districts, which latter lists had been transferred to Michigan authorities in May, 1857, which letter is found on pages 291 and 292 of the Record.

99. In admitting in evidence over plaintiff's objection, Exhibit 153, being from the State land office of Michigan, original supplemental list E of swamp lands in the Chebovgan district, which list

is found on pages 292 and 293 of the Record.

100. In admitting in evidence over plaintiff's objection, Exhibit 154, being from the State land office of Michigan, approved list No. 11, of swamp lands in the Ionia district, which exhibit is found on

pages 294 to 297 of the Record.

101. In admitting in evidence over plaintiff's objection, 440 Exhibit 155, being a letter from Governor Crapo to Commissioner Edmunds, dated June 20, 1866, acknowledging the receipt of a copy of approved list No. 11, and requesting that patents issue for the same, which letter is found on page 298 of the Record.

102. In admitting in evidence over plaintiff's objection, Exhibit 156, being copy of patent of the United States to the State of Michigan, No. 22, covering lands in towns 28 north, range 4 west, and 24 north, range 9 west. The same lands as are included in approved list No. 11 (Exhibit 154), which patent is found on pages

298 to 301 of the Record.

103. In admitting in evidence over plaintiff's objection, Exhibit 157, being a letter of James W. Sanborn, commissioner of the State land office to Governor Wisner, dated April 5, 1859, inclosing to the governor a copy of the letter of Commissioner Hendricks to Treadwell, commissioner of the State land office, dated December 18, 1858, and lists of towns inclosed in the latter letter. Also other documents showing the difference in the acreage of swamp lands under the old and the resurveys. In certain towns showing a decrease by the resurvey of over 78,000 acres, and in the lands already

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patented to the State a difference of 235,000 acres. Other documents are included showing the difficulty in locating the lands described in the patents by reason of the discrepancies in the two surveys, and submitting the whole matter to the governor for his advice in the premises, which letter is found on pages 302 and 303 of the Record.

104. In admitting in evidence over plaintiff's objection, Exhibit 158, being a report of the committee on public lands from the legislature of the State of Michigan of 1861, together with statement B attached to that report. The committee report that the policy heretofore inaugurated to reclaim the swamp lands by means of roads and ditches, meets with their approval, and suggests

augurating such disposition of lands. The amendments are by way of saving expense and a change in the method of selecting lands by contractors, allowing them to take lands in lieu of the money, and not be confined to the lands within the county in which the work was being done. That the house may better understand the situation, table B has been procured and submitted, from which the total amount of lands granted to the State in the respective counties may be ascertained and the amount for which patents have been received, together with the total acreage of the grant. They also suggest some changes in the methods of granting lands to occupants and settlers under the homestead license, and present a bill for that purpose, which report and table referred to are found on pages 303 to 308 of the Record.

105. In admitting in evidence over plaintiff's objection, Exhibit 159, being a letter from Samuel S Lacey, commissioner of the State land office, to Commissioner Edmunds, dated July 10, 1861, inclosing statement B, as attached to the report contained in Exhibit 158, asking when the lands appearing to have been unpatented may be patented to the State of Michigan, which letter is found on page

308 of the Record.

106. In admitting in evidence over plaintiff's objection, Exhibit 160, reports of the commissioners of the State land office for the

years 1860 to 1878 inclusive.

The report for 1860 states that the complications relating to the swamp lands between the State and General Government have not been diminished, but rather were increased by delay, and that the commissioner has prepared a summary showing the discrepancies that have arisen, from which it appears that of the lands approved to the State, \$08,336.61 acres were still unpatented. Which amount he believes to be nearly correct. Some general recital is then given as to the difference in acreage by reason of the resurveys, and states that from the correspondence on file in his office, he concludes that the department at Washington propose to

use resurvey as a basis for future patents. Calls attention to the fact that in some fifteen townships original selections are made amounting to over 35,000 acres, but none of them had been approved to the State. The commissioner is of the firm conviction that the grant can never be adjusted by correspondence, but

that a personal communication between constituted authorities is a better method of arriving at an adjustment, and he fears that the department at Washington is withholding for the purpose of compelling an adjustment in accordance with their ideas.

The report for 1861 states that a complete list of undisposed lands, to which the State is entitled to patents, has been made and forwarded to the Commissioner of the General Land Office, with a

request that patents issue as speedily as possible.

The report for 1862 states that, proceeding under the State act of 1861, relating to undisposed swamp lands, they have received patents for over 362,000 acres of lands, and that patents are in preparation which will increase the amount to over 533,000 acres. He believes the matters are in a way to a speedy adjustment.

The report for 1865 refers to the action of preceding commissioners under the act of 1861, and that comparisons on the list pre-

pared are still being made.

The report for 1866 states that they have received approved lists for about 231,000 acres, which had been omitted from former lists; that as soon as patents are received they can be brought into market.

Report for 1868 states that the entire amount of swamp lands conveyed to the State by the act of Congress had been patented, with the exception of about 40,000 acres in Cheboygan and Houghton counties.

The report for 1869 states that the amount still unpatented is about 35,000 acres lying in Cheboygan county. It is embraced within an Indian reservation.

Report for 1870 contains a statement showing that the total amount of swamp lands passed to the State under the act of Congress to be 5,794,308.57 acres.

The report for 1872 states that of thirty-six millions acres of lands in the State of Michigan, over thirteen and a half millions have been granted to the State for various purposes.

Report for 1874 contains some figures showing the amount of lands for which the State had received patents of swamp lands, and the amount still on hand and otherwise disposed of.

Extracts from all of which reports are found on pages 309 to 316

of the Record.

107. In admitting in evidence over plaintiff's objection, Exhibit 161, being a copy from the records at Washington of the surveyor general's list No. 1, Grand River district, so far as it covers towns. 18 north, range- 3 and 4 west, which exhibit is found on pages 316 to 320 of the Record.

108. In admitting in evidence over plaintiff's objection, Exhibit 162, being a copy from the General Land Office of Ionia approved list No. 1, so far as it covers towns. 18 north, ranges 3 and 4 west,

which exhibit is found on pages 320 to 325 of the Record.

109. In permitting the witness, Edward W. Sparrow, to answer the question, "Were they selected in advance of the performance?" Which question was answered, "No, sir" (Record, p. 326).

110. In permitting the witness Edward W. Sparrow to answer the

question, "When did you complete the performance of the contract under which you obtained title to those lands now?" The answer to which was, after referring to the patent for the lands, "I think in 1886" (Record, p. 326).

111. In permitting the witness Edward W. Sparrow to answer the question, "Do you not know that the patents were signed in blank and left in the hands of the secretary of state?" Which question was answered, "I do not" (Record, pp. 326 and 327).

112. In permitting the witness William L. Webber to answer the question, "What was the occasion of your being present?" Which question was answered, "I was there as attorney for the Flint &

Pere Marquette Railroad Co. to protest against the sale, and make claim for certain odd-numbered descriptions that were

offered for sale " (Record, p. 327 and 328).

113. In permitting the witness William L. Webber to answer the question, "Now at that sale was there any notice given in behalf of the State of Michigan, or any protest made to the sale on the part of the State of Michigan?" Which question was answered, "None to my knowledge" (Record, p. 328).

114. In permitting the witness Charles A. Rust to answer the question, "In the purchase of these lands, what title did you understand you were obtaining?" Which question was answered, "We supposed we were getting a good title" (Record, p. 328).

115. In admitting in evidence over plaintiff's objection, Exhibit 163, being a tax deed from the State of Michigan by the auditor general of the State of Michigan, to C. A. Rust, dated July 30th, 1892, issued in pursuance of a sale of the lands in controversy, for the delinquent taxes for the year 1888, at a sale thereof made May 4th, 1891, for the sum of \$350.24, which exhibit was produced in evidence at page 329 of the Record, and is found in full at page 330.

116. In permitting the witness William L. Webber, to answer the question, "As a matter of fact, didn't that sale of the quantity of land, and the proceedings that were taken in relation to it, attract a good deal of public attention through the State?" Which question was answered, "It did throughout our section of the State, and throughout other sections of the State where they were interested

in the lands, so far as I know" (Record, p. 332).

117. In denying the motion of plaintiff's counsel to strike out and reject all the documentary evidence introduced on the part and in behalf of defendants relating to fraudulent and defective and erroneous surveys of the townships of Michigan prior to the act of Congress of September 28, 1850, for the reason that such evidence is irrelevant and immaterial to the issue in this suit, the evidence referred to being Exhibit 57 (p. 80), Exhibit 58 (p. 81), Exhibit 59

(p. 83). Exhibit 60 (p. 85), Exhibit 61 (p. 94), Exhibit 62 (p. 96), Exhibit 63 (p. 99), Exhibit 64 (p. 100), Exhibit 65 (p. 100), Exhibit 66 (p. 102), Exhibit 67 (p. 103), Exhibit 68 (p. 106), Exhibit 69 (p. 107), Exhibit 70 (p. 108), Exhibit 71 (p. 113), Exhibit 72 (p. 113), Exhibit 73 (p. 114), Exhibit 74 (p. 116), Exhibit

75 (p. 124), Exhibit 76 (p. 130), which motion is found on pages 332

and 333 of the Record.

118. In denying the motion of plaintiff's counsel to strike out and reject the documentary evidence introduced on the part of defendants relative to the resurveys in Michigan after the 28th day of September, 1850, for the reason that such evidence is irrelevant and immaterial to the issue in this suit, the matter referred to being Exhibit 77 (p. 134), Exhibit 78 (p. 137), Exhibit 79 (p. 140), Exhibit 80 (p. 147), Exhibit 81 (p. 149), Exhibit 83 (p. 169), Exhibit 86 (p. 172), Exhibit 90 (p. 177), Exhibit 91 (p. 178), Exhibit 92 (p. 179), Exhibit 93 (p. 180), Exhibit 94 (p. 181), Exhibit 95 (p. 181), Exhibit 96 (p. 182), Exhibit 97 (p. 183), Exhibit 114 (p. 214), Exhibit 116 (p. 230), Exhibit 117 (p. 230), Exhibit 118 (p. 231), Exhibit 119 (p. 232), Exhibit 120 (p. 233), Exhibit 121 (p. 235), Exhibit 122 (p. 237), Exhibit 123 (p. 237), Exhibit 124 (p. 238), Exhibit 125 (p. 241), Exhibit 126 (p. 241), Exhibit 131 (p. 248), Exhibit 137 (p. 263), Exhibit 144 (p. 276), Exhibit 146 (p. 278), Exhibit 148 (p. 281), Exhibit 149 (p. 283), Exhibit 150 (p. 285), Exhibit 151 and 151 A (p. 286), which motion is found on page 333 of the Record.

119. In denying the motion of plaintiff's counsel to strike out and reject all the documentary evidence produced by defendants, relative to the resurveys in Michigan after the approval of the swamp-land list by the Secretary of the Interior, and the transmission of such list and the plat to the governor of the State of Michigan, called Ionia list No. 1, for the reason that such evidence is immaterial and irrelevant to the issue. The matter referred to being that part of Exhibit 81, commencing with the report of the Commissioner of the General Land Office for the year 1853 (p. 153), Exhibit 83 (p.

169), Exhibit 86 (p. 172), Exhibit 90 (p. 177), Exhibit 91 (p. 446 178), Exhibit 92 (p. 179), Exhibit 93 (p. 180), Exhibit 94 (p. 181), Exhibit 95 (p. 181), Exhibit 96 (p. 182), Exhibit 97 (p. 183), Exhibit 114 (p. 214), Exhibit 116 (p. 230), Exhibit 117 (p. 230), Exhibit 118 (p. 231), Exhibit 119 (p. 232), Exhibit 120 (p. 233), Exhibit 121 (p. 235), Exhibit 122 (p. 237), Exhibit 124 (p. 238), Exhibit 125 (p. 241), Exhibit 126 (p. 241), Exhibit 131 (p. 248), Exhibit 137 (p. 263), Exhibit 144 (p. 276), Exhibit 146 (p. 278), Exhibit 148 (p. 281), Exhibit 149 (p. 283), Exhibit 150 (p. 285), Exhibit 151 and 151 A (p. 286), which motion is found on page 333 of the Record.

120. In denying the motion of plaintiff's counsel to strike out and reject supplemental lists of the swamp lands made by the surveyor general, filed in the office of the Commissioner of the General Land Office at Washington, May 12, 1858, and the map of the resurvey filed in the office of the register and receiver, June 3, 1858, the matter referred to being Exhibit 123 (p. 237), Exhibit 124 (p. 238), Exhibit 153 (p. 292), which motion is found on page 333 of the Record.

121. In rejecting and excluding on plaintiff's offer, the records and files in the case of the *United States vs. Henry Nicholson et al.*, in the United States circuit court for the eastern district of Michigan, being Exhibit 175 A. This was an action brought by the United

States against Henry Nicholson and his bondsmen, based on the contract of Nicholson with Surveyor General Haines, dated the 20th day of July, 1838, for the survey according to the laws of the United States and the instructions of the surveyor general of towns 18, 19 and 20 north, ranges 1, 2 and 3 west, and the bond given in pursuance of that contract, dated the 20th of July, 1838, alleging as breaches of the condition of the bond that Nicholson as deputy surveyor did not well and truly and faithfully, according to the laws of the United States and the instructions of the surveyor general, make and execute the surveys required under the terms of his contract, and did not return the field-notes of such a survey, and

that he did not, with his chainmen and axemen and flag-447 bearers, lay out and subdivide the towns in the sections as required to do by the contract. The plea was one of performance, and that if there had been a non-performance, full payment and satisfaction had been made by the defendants, and that the bond was released and discharged. On the trial of the case before a jury on the 25th day of November, 1850, there was a verdict in favor of the defendants, which records and files, so far as they have a bearing on this issue, are found on pages 357 to 364 of the Record.

122. In rejecting and excluding the records and files in the case of the United States vs. Henry Brevoort et al., in the United States circuit court for the eastern district of Michigan, being Exhibit 175 B. This action was in the same form as the action against Nicholson, set forth in the preceding assignment, his contract bearing date December 13, 1839, covering towns 24, 25, 26 and 27 north, ranges 1, 2 and 6 west, and towns 25, 26 and 27 north, ranges 3, 4 and 5 west, and towns 24, 25 and 26 north, range 7 west. Declaration alleges in substance a non-performance of the contract in accordance with the laws of the United States and the instructions of the surveyor general, and the plea is that the contract was fully performed. On a trial of the cause before a jury on the 23d day of November, 1850, there was a verdict for the defendants, which records and files, so far as they bear upon this issue, are found on pages 364 to 374 of the Record.

123. In rejecting and excluding from evidence on the offer of plaintiff, Exhibit 176, being a letter dated December 13, 1850, from J. M. Howard to Secretary of the Interior Stewart, reciting the institution of suits in the United States court against Deputy Surveyors Nicholson, Brevoort, and others, at the suggestion of Lucius

Lyon, the late surveyor general.

Mr. Howard was the counsel employed in the cases for one of the defendants, Mr. Mullett, and gives the history of the trial of the case against Brevoort, and alleges that there was not the slightest proof

that the returns of the surveys by Brevoort were fraudulent
or fictitious, as had been reported, and states that the Government relied upon the testimony of Wm. A. Burt, the deputy
surveyor, who had made an examination, under instructions of
Surveyor General Lyon, of the surveys in controversy, in April,
1849, and the following months, and indicates that Mr. Burt re-

ceived, as his compensation for these surveys, \$2,500 more than he was by law entitled to receive, and from his testimony it appeared that he found many of the old monuments of the old surveys, and that a large portion of the country examined had been run over by fire, which had consumed most of the timber, and the same facts were proved by other witnesses, which letter is found on pages 375

to 377 of the Record.

124. In rejecting and excluding from evidence on offer of plaintiff, Exhibit 177, being a letter from United States District Attorney Bates to Hon. James L. Conger, dated February 10, 1851, referring to the trial against Brevoort and Mullett; states that the cause was tried in the previous December, and had been taken to the Supreme Court on bill of exceptions, but the evidence of the trial was conclusive that the surveys had been faithfully fulfilled, and that eventually the defendants would have a verdict, which exhibit is found on page 378 of the Record.

125. In rejecting and excluding from evidence on the offer of plaintiff, Exhibit 178, being a letter from United States District Attorney Bates to Commissioner utterfield, dated February 11, 1851, reciting in substance the factor in the preceding assignment, we are letter is found on pages 378

and 379 of the Record.

126. In rejecting and excluding from evidence on the offer of plaintiff, Exhibit 179, and the inclosures contained in it, being a letter from Chas. Noble, surveyor general, to Commissioner Butterfield, dated February 28th, 1851, inclosing two letters of Henry Brevoort, Jr., making charges against the late Surveyor General Lucius Lyon. The first letter is dated February 11, 1851, and charges that Lyon had been given contracts for districts too large

for him to execute in person, and had let them out to other 449 persons, so that he could not run and mark the lines as he

was required to do by the general instructions governing surveying contracts. That he did not accompany his surveying parties to the districts contracted, but remained at Detroit and Lansing sufficient time so that he had not given over five or six weeks to the field-work covered by his contracts, and that while the instructions required the surveys to be made by the use of Burt's solar compass, Lyon had only one such instrument for the entire party, and that he had failed to pay numbers of the men who were in his employ. The second letter is dated February 14th, 1851, replying to a letter of the 7th inst., from Noble to Brevoort, requesting him to furnish the proof of his statement, in which Mr. Brevoort says he is ready to produce competent testimony in any court whenever called upon to do so, which letters are found on pages 380 to 383 of the Record.

127. In rejecting and excluding from evidence over plaintiff's objection, Exhibit 180, being a letter from Wilson, Commissioner, to Surveyor General Noble, dated January 15, 1853, stating that the order to determine what action should be had with reference to the surveyor general's office in view of the act of Congress of 1840, relative to the closing of the office, suggests that the chief clerk,

Mr. Frost, be sent to Washington to personally give such information and receive such instructions as are desired, which exhibit is

found on page 384 of the Record.

128. In rejecting and excluding from evidence, Exhibit 181, being a letter from Surveyor General Noble to Commissioner Wilson, dated February 14, 1853, stating that he has prepared in the limited time allowed him a schedule of the field-notes and office work yet to be completed in his office, and that the bearer, Mr. Frost, had been detailed to present the same, and that he would give such further information as he deemed important for the Commissioner's office. Attached to the letter is the schedule referred to, showing ten townships of resurveys not yet completed, and seven town-

ships in the Upper Peninsula unsurveyed, and seven townships the surveys of which made in 1851 were suspended, and that a number of towns yet to be platted and the notes transcribed, which exhibit is found on pages 385 and 386 of the

Record.

129. In rejecting and excluding from evidence over plaintiff's objection, Exhibit 182, being a statement of Mr. Frost as chief clerk of the surveyor general's office to Commissioner Wilson, dated February 24, 1853, stating that it is estimated there are upwards of 100 townships, excluding the Higgins surveys, which are either reported or represented to be fraudulent and defective. That pending the surveys there was considerable office work relating to these townships, and others, uncompleted. There was estimated that there was one thousand plats yet to be copied before the archives of the office could be transferred, and that it was an important fact in reference to the resurveys of the lands in the northern part of the Southern Peninsula; that it would be fairly estimated that the Government would lose nothing by ordering the work, for if the swamp-land selections were made according to the indications of the new surveys, sufficient land could be sold by the General Government to more than pay the entire cost of resurveys, which exhibit is found on pages 387 and 388 of the Record.

130. In refusing to give plaintiff's request to charge No. 4, which

request is as follows:

The act of Congress made it the duty of the Secretary of the Interior to identify the lands granted, and when he tendered to the State of Michigan the election to receive the lands granted, according to the field-notes of the Government survey, as the basis of identification, in accordance with the instructions under date of November 21, 1850, which method of identification was accepted by the legislature of the State by an act passed and approved June 21, 1851, the method so tendered and accepted became a compact between the State of Michigan and the United States, and was binding upon both parties (Record, p. 400).

131. In refusing to give plaintiff's request to charge No. 5, which

request is as follows:

451 The Secretary of the Interior having approved the selections contained and designated by legal subdivisions in a list called the Ionia land district No. 1, over his hand, and bearing

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date the 27th day of October, A. D. 1853, and made a plat thereof, under and in accordance with said act of Congress, and forwarded said list of legal subdivisions and plat to the governor of the State of Michigan, and suggested that the governor request patents therefor from the United States, and the governor having requested patents to be issued therefor on the 31st day of January, 1854, and the legal subdivisions in issue in this suit being contained in and designated as swamp lands in said list and plat as swamp lands inuring to the State of Michigan under said act of Congress, the title to the legal subdivisions described in the plaintiff's declaration in issue in this suit became fully identified and fully vested in the State of Michigan (Record, p. 400).

132. In refusing to give plaintiff's request to charge No. 6, which

request is as follows:

That after making said list and plat and forwarding them to the governor of the State of Michigan, the work of issuing the patents therefor, as requested by the governor, was merely ministerial, and the Secretary of the Interior could not deprive the State of Michigan of such lands by neglecting or refusing to issue patents therefor (Record, p. 400).

133. In refusing to give plaintiff's request to charge No. 7, which

request is as follows:

The act of Congress approved March 3, 1857, confirmed to the State of Michigan all selections embraced in the approved list No. 1 of the Ionia land district, which were, at the date of said act, vacant and unappropriated, and not interfered with by previous settlement under the laws of the United States; and the uncontradicted evidence in this case showing that the lands described in the plaintiff's declaration were embraced in such selections and contained in the approved list and plat made by the Secretary of the Interior,

and were, on the 3d of March, 1857, vacant, unappropriated and not interfered with by previous settlement under the laws of the United States, were by that act confirmed to the State of Michigan, such act of confirmation operating as a grant of lands embraced in such approved list and plat (Record, pp.

400, 401).

134. In refusing to give plaintiff's request to charge No. 8, which

request is as follows:

If such approved list made and approved by the Secretary of the Interior was, on the 3d of March, 1857, withheld from patent because of the resurveys having been ordered or made, and if he had any corrective or other authority over such list to alter and act upon it, then the act of March 3, 1857, applied to such list and confirmed the lands designated therein to the State of Michigan, and deprived the Secretary of the Interior of all power in the premises save to cause patents to such lands to be issued to the State of Michigan (Record, p. 401).

135. In refusing to give plaintiff's request to charge No. 9, which

request is as follows:

The testimony in the case fails to show that there had been any such adjustment of the swamp-land grant between the State of

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Michigan and the United States, as in law deprives the State of the title of the land granted to it under the act of Congress of September 28, 1850, and claimed in this suit (Record, p. 401).

136. In refusing to give plaintiff's request to charge No. 10,

which request is as follows:

The testimony in this case fails to show that there has been any estoppel as against the State to forbid its grantee and those claiming title from the State to rely upon the act of Congress granting the lands involved in the issue in this case to the State (Record, p. 401).

137. In refusing to give plaintiff's request to charge No. 11.

which request is as follows:

Upon the whole record and the testimony given you in the open court, your verdict should be for the plaintiff (Record, p. 401.)

138. In the district judge charging the jury as follows:

"I will say to counsel that, as it lies in my mind, there is no substantial distinction between this case and the first, except that the lands in question are found in an approved list, which was subsequently revoked and canceled by the Secretary of the Interior, and the question that arises upon the power of the Secretary to order the resurvey or revoke any certification of lands made by him before the actual issue of patents. If he had such power, then, of course, the title of the defendants must prevail in this action, and I have no doubt the Secretary had the power not only to order the resurvey as I have held before" (Record, p. 403).

139. In the district judge charging the jury as follows:

"But at any time before the issue of patents, if he discovered that there was fraud or mistake, or if he was satisfied upon the evidence before him that the lands were not of the character granted by the act of September 28, 1850, it was his duty, notwithstanding he had certified them to the State by approval of the list, to revoke that certification, cancel it, and the lands remain unaffected. And of course, if the patents had been issued, it was quite probable that this action would have been conclusive on the rights of the parties, that patent not having been issued, and the Secretary having decided, as it was his province to decide on the facts before him, that the lands were not of the character granted, I think the title of the defendants must prevail" (Record, pp. 403, 404).

140. In the district judge charging the jury as follows:

"With reference to the act of 1857, my impression is very strong. Both from the reading of the act and from what I have seen in the decisions of the Department of the Interior, where the question has arisen once or twice that the act was primarily intended for those selections of land made by the States themselves pursuant to the surveys which they had made, and had no application, at least it

wasn't originally intended for and does not apply to those lands designated as swamp lands under the surveys of the

United States, and it certainly has no application to those lands the lists of which were set aside and canceled, and of which a resurvey was ordered by the Secretary of the Interior, and the act of 1857 could not, in my judgment, even if it intended to apply to

all the States alike, it could not revive selections which had been so far canceled by the Secretary of the Interior in the line of his duty as to order a resurvey of those lands" (Record, p. 404).

141. In the district judge directing a verdict for the defendants,

as requested by defendants' counsel (Record, p. 404).

142. There is also error in this, to wit, that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid, was given for the said defendant, Charles A. Rust, survivor, etc., and against the said Michigan Land and Lumber Company (Limited); whereas, by the law of the land, the said judgment ought to have been given for the said Michigan Land and Lumber Company (Limited), and against said Charles A. Rust, survivor, etc.

And the said Michigan Land and Lumber Company (Limited), prays that the judgment aforesaid for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled and altogether held for nothing, and that it may be restored to all things that it has lost by occasion of said judg-

ment, etc.

FRANK E. ROBSON, Attorney for Plaintiff.

455 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Eastern District of Michigan.

THE MICHIGAN LAND AND LUMBER Co. (LIMITED), Plaintiff,

Ejectment.

Charles Rust, Survivor in the Action of Ejectment against Amasa Rust and Charles Rust, Defendant.

The above-named plaintiff, The Michigan Land and Lumber Company, Limited, conceiving itself aggrieved by the judgment entered on the third day of August, 1893, in the above-entitled proceeding, and having filed with the clerk of said court assignments of error, doth hereby pray that a writ of error to said circuit court may be allowed, and that a transcript of the record and proceedings and papers upon which said judgment was entered, duly authenticated, may be sent to the circuit court of appeals of the United States for the sixth judicial circuit at Cincinnati.

Dated the 12th day of January, 1894.

FRANK E. ROBSON AND J. W. CHAMPLIN, Attorneys for Plaintiff and Appellant.

And now, to wit, on the 12th day of January, 1894, it is ordered that a writ of error be allowed as prayed for.

HENRY H. SWAN, District Judge. 456 United States Circuit Court of Appeals for the Sixth Circuit,

United States of America, sixth Judicial Circuit, ss:

The President of the United States to the honorable the judge of the circuit court of the United States for the eastern district of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between The Michigan Land and Lumber Company, Limited, plaintiff, and Charles A. Rust, survivor of himself and Amasa Rust, deceased, defendant, a manifest error bath happened, to the great damage of the said The Michigan Land and Lumber Company, Limited, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the sixth circuit, together with this writ, so that you have the same at Cincinnati, in said circuit, on the 10th day of February next, in the said circuit court of appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 12th day of January, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States of America the one hundred and eighteenth.

[SEAL.] WALTER S. HARSHA,

Clerk of the Circuit Court of the United States
for the Eastern District of Michigan,

Allowed by— HENRY H. SWAN, District Judge.

Service of a true copy of the within writ this day is hereby acknowledged, January 15th, 1894.

HANCHETT, STARK & HANCHETT

HANCHETT, STARK & HANCHETT, Attorneys for Defendant in Error.

United States Circuit Court of Appeals for the Sixth Circuit.

United States of America, Sixth Judicial Circuit, \$88:

To Charles A. Rust, survivor of himself and Amasa Rust, Greeting: You are hereby cited and admonished to be and appear at a session of the United States circuit court of appeals for the sixth circuit, to be holden at the city of Cincinnati, in said circuit, on the 10th day of February next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Michigan, wherein The Michigan Land and Lumber Company, Limited, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 12th day of January, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States of America the one hundred and eigh-

teenth.

HENRY H. SWAN, District Julge.

Service of a true copy of the within citation this day is hereby acknowledged.

January 15, 1894.

HANCHETT, STARK & HANCHETT, Attorneys for Defendant in Error.

Know all men by these presents, that we, The Michigan Land and Lumber Company, Limited, of Lansing, Michigan, as principal, and Edward W. Sparrow, of Lansing, Michigan, and Samuel L. Smith, of Detroit, Michigan, as sureties, are held and firmly bound unto Charles A. Rust, of Saginaw, Michigan, in the fall and just sum of five hundred dollars (\$500), to be paid to the said Charles A. Rust, his certain attorneys, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this twelfth day of January, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas, lately at a session of the circuit court of the United States for the sixth circuit, eastern district of Michigan, in a suit depending in said court, between the said Michigan Land and Lumber Company, Limited, as plaintiff, and said Charles A. Rust, survivor of himself and Amasa Rust, deceased, defendant in ejectment, a judgment was rendered against the said Michigan Land and Lumber Company, Limited, and the said Michigan Land and Lumber Company, Limited, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Charles A. Rust, citing and admonishing him to be and appear at a session of the United States circuit court of appeals for the sixth circuit, to be holden at the city of Cincinnati, in said circuit, on the tenth day of February next:

Now, the condition of the above obligation is such, that if the said Michigan Land and Lumber Company, Limited, shall prosecute its writ of error to effect, and answer all damages and costs if it fail to

make its plea good, then the above obligation to be void; else to remain in full force and virtue.

MICHIGAN LAND AND LUMBER COMPANY (LIMITED), [SEAL.]
By E. W. SPARROW, Manager. [SEAL.]
EDWARD W. SPARROW. [SEAL.]

Sealed and delivered in presence of—

District Judge.

FRED. L. SMITH. E. WM. SNYDER.

Approved by— HENRY H. SWAN.

459 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District of Michigan.

THE MICHIGAN LAND AND LUMBER Co. (LIMITED)
vs.
CHARLES A. Rust, Survivor of Himself and Amasa
Rust.

I, Walter S. Harsha, clerk of the circuit court of the United States for the eastern district of Michigan, do hereby certify and return to the writ of error sued out by the plaintiff in the above-entitled cause to the United States circuit court of appeals for the sixth circuit, that the above and foregoing is a true and correct copy of the record and proceedings of said cause as the same appears on file and of record in my office; that I have compared the same with the original, and it is a true and correct transcript therefrom and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Detroit, in said district, this sixteenth day of January, in the year of our Lord one thou-

[SEAL.] sand eight hundred and ninety-four, and of the Independence of the United States of America the one hundred and eighteenth.

WALTER S. HARSHA, Clerk.

Afterwards, to wit, on April 10th, 1894, the following stipulation was filed herein, which reads and is in the words and figures following, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

MICHIGAN LAND & LUMBER COMPANY, LIMITED, Plaintiff in Error,

vs.

CHARLES A. RUST, Survivor, Defendant in Error.

In this cause it is hereby stipulated by and between the parties hereto, by their respective attorneys, that the hearing and argument of said cause may be continued over the May term of said court and not brought on for argument until the June term thereof. Dated April 7th, A. D. 1894.

FRANK E. ROBSON.

Attorney for Plaintiff in Error.

HANCHETT, STARK & HANCHETT, Attorneys for Defendant in Error.

461 And afterwards, to wit, on May 23rd, A. D. 1894, the following order was made upon the journal of said court, clothed in the words and figures following, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

MICHIGAN LAND & LUMBER COMPANY, LIMITED, Plaintiff in Error,

V8.

CHARLES A. Rust, Survivor, Defendant in Error.

Present: The Honorables Wm. H. Taft and Horace H. Lurton, circuit judges, and Hon. Henry F. Severens, district judge.

By stipulation this cause is continued to the June session.

And afterwards, to wit, on May 31st, 1894, the following stipulation was filed herein, which reads and is in the words and figures following, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

MICHIGAN LAND & LUMBER COMPANY, LIMITED, Plaintiff in Error,

vs.

CHARLES A. RUST, Survivor, Defendant in Error.

In this cause it is hereby stipulated by and between the parties hereto, by their respective attorneys and counsel, that the 462 said cause be continued over the June session and stand for hearing and argument at the October session of said court. Dated May 28th, 1894.

J. W. CHAMPLIN, FRANK E. ROBSON,

Attorneys and Counsel for Defendant. HANCHETT, STARK & HANCHETT,

Defendant's Attorneys.

And afterwards, to wit, on October 2nd, A. D. 1894, at a term of said court begun and held at the city of Cincinnati, Ohio—present, the Honorables Wm. H. Taft and Horace H. Lurton, circuit judges, and Hon. Henry F. Severens, district judge—the following order was made upon the journal of said court, clothed in the words and figures following, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

MICHIGAN LAND & LUMBER COMPANY, LIMITED, Plaintiff in Error,

CHARLES A. RUST, Survivor, Defendant in Error.

This cause came on this day for hearing and is argued in part.

And afterwards, to wit, on the 3rd day of October, A. D. 1894, the same judges being present, the following order was made upon the journal of said court, which reads as follows, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

MICHIGAN LAND & LUMBER COMPANY, LIMITED, Plaintiff in Error,

vs.

CHARLES A. RUST, Survivor, Defendant in Error.

This cause, coming on again this day, is further argued.

And afterwards, to wit, on the 4th day of October, A. D. 1894, the same judges being present, and order was made upon the journal of said court, clothed in the words and figures following, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

MICHIGAN LAND & LUMBER COMPANY, LIMITED, Plaintiff in Error,

CHARLES A. RUST, Survivor, Defendant in Error.

This cause came on and was further argued and submitted.

And afterwards, to wit, on May 7th, A. D. 1895, and opinion was rendered in said cause by said court, which reads as follows, to wit:

United States Circuit Court of Appeals for the Sixth Circuit, 465 October Term, 1893.

THE MICHIGAN LAND & LUMBER COM- No. 178. Error to the PANY, LIMITED, Plaintiff in Error, Circuit Court of the United States for the CHARLES A. RUST, Survivor, etc., Defend-Eastern District of Michigan.

ant in Error.

(May 7, 1895.)

Before Taft & Lurton, circuit judges, and Severens, district judge.

This is an action in ejectment brought in the court below by the plaintiff in error to recover two hundred and sixty acres of land in township 18, north of range 3 west, in the county of Clare, State of The declaration originally included other lands, but they were stricken out by amendment, and by a further amendment the plaintiff's claim was limited to an undivided half interest, which it claims in fee. The plea was the general issue. The case was tried by the court with a jury upon evidence adduced by the parties, and the jury, by direction of the court, rendered a verdict for the defendant. Judgment having been entered thereon, the plaintiff brings the case here for review upon exceptions taken upon the trial to the rulings admitting or rejecting evidence, and to the giving and refusal of instructions to the jury.

The plaintiff founds its right to recover upon a title derived through Edward W. Sparrow, to whom patents of the land were issued by the State of Michigan, bearing date April 14th, 1887. is claimed that the State had acquired title to the lands under the act of Congress of September 28th, 1850, known as the swamp-land grant. The defendant claims title through mesne conveyances under patents issued by the United States for parts of the lands in question to William A. Rust May 10th, 1870, and for the other part to Addison P. Brewer, January 10th, 1867, upon purchases of the said lands

by the respective patentees.

466 The questions involved render it necessary to take into view a brief history of the proceedings of the United Statesand of the State of Michigan taken for the survey and disposition of the public lands lying within the State, proceedings, some of which took place prior to the date of the grant, but which created conditions in which the grant was administered, and others of which are explanatory of the intent and purposes of those who participated in its adjustment. So much of this history as is deemed essential in the opinion of the court will now be referred to.

Prior to the enactment of the swamp-land grant, act of September 28th, 1850, the larger portion, but not all, of the public lands in Michigan had been surveyed. The work had been done by deputy surveyors under contracts with the United States. Unfortunately such contracts were in many instances defectively and fraudulently executed and the surveys were so imperfect that great embarrassment and difficulty was experienced in making locations and settling

the country, not only from the lack of the marks and indications upon the land required by the law of the survey, but also from the falsity of the character given to the quality of the land, which was likewise required to be stated in the survey. Such imperfections and difficulties arising from defective surveys existed in other States. but they seem to have been extraordinary in Michigan, and the mischief was widely extended through the State. Soon after the admission of the State into the Union the legislature adopted a joint resolution which was transmitted by the governor to the President of the United States by a communication dated February 3rd, 1842. reciting that large districts of land within the State had been returned by the deputy surveyors as surveyed where no surveys whatever had been made, or where the surveys had been so imperfeetly done as to be utterly valueless; and that the lands so represented as surveyed had been offered for sale to the very great injury of the State and the citizens thereof, and requesting the President to cause a resurvey to be made in certain townships, 81 in number. represented to have been surveyed, but which had not been surveved, or so imperfectly surveyed that the work was valueless Upon the recommendation of the Commissioner of the General Land Office, the governor's communication and the resolution of the legislature were referred to the surveyor general for a report of the facts, to the end that proper action might be taken. A report was made by that officer, stating that information of a similar character about the surveys in Michigan had come to him, showing how such frauds as were complained of might exist without appearing from anything in his office, and recommending the sending of an experienced surveyor into the field to test enough of the surveys to determine the truth in regard to them. Upon this report the Commissioner of the General Land Office issued instructions to the surveyor general to pursue the course which the latter had recommended, and if the surveys proved defective in field-work, that new surveys in all such cases should be made. The governor of the State was notified of what 467 was being done in response to the request of the legis-On the 11th day of April, 1842, the surveyor general commissioned William A. Burt to make the proposed examination. This commission was executed by Mr. Burt, and upon his report the surveyor general communicated the results thereof to the Commissioner of the General Land Office, stating that the report furnished abundant proof that the surveys examined by Mr. Burt were grossly defective and fraudulent, and added that there was great probability that the other surveys made under the same contracts were as defective as those which had been examined. stance of this report was communicated to Senator Porter, of Mich-

igan, by the Commissioner of the General Land Office with a statement that it was designed to issue instructions for the necessary resurveys. In a further communication from the surveyor general to the Commissioner of the General Land Office in April, 1843, it was stated that by a report of Mr. Burt, whose examinations appear to have been continued, in the townships examined by him, a very small portion of any of the lines had been surveyed or marked, and that what was found to have been done was so erroneous and de-

fective that little or none of it could be relied upon.

In September, 1844, Mr. Woodbridge, who was then a Senator from Michigan, addressed the Commissioner of the General Land Office, and referring to the measures taken by him to obtain appropriations for resurveys in that State, said that the great and increasing evils suffered by the State in consequence of the false surveys made therein, remained without correction; that they were of incalculable extent, and had produced a deep feeling of wrong throughout the State. In reply to that letter, after referring to the apportionment of an appropriation to be expended in correcting fraudulent surveys in certain parts of the State, the Commissioner further said: "All the other cases of erroneous or defective surveys in Michigan will be examined and instructions issue as speedily as they can be prepared." In pursuance of this general purpose, extensive examinations were made and resurveys were directed in various parts of the State. Resurveys were accordingly made and instructions were issued by the Commissioner of the General Land Office to the officers of the local land offices in the State, directing them to cancel the plats of the old surveys immediately on receipt of the plats of the new surveys, making proper reference on the old plats to the new ones, so that the old plats should not be used under any circumstances. Reports continued to come in showing the results of the examinations of the old surveys indicating their erroneous and defective character, and under the instructions of the Land Department resurveys were carried on in the localities which were shown to have been defectively surveyed.

On the 10th day of July, 1849, the surveyor general in a letter to the Commissioner of the General Land Office stated that from the examinations that had been made by Mr. Burt

within the last three months it appeared that most of the field-notes originally returned to the surveyor general's office by Deputies Nicholson, Brookfield and Brink as containing true descriptions of surveys made by them, were fictitious and fraudulent. The surveyor general thereupon recommended an entirely new survey of the districts just referred to, being those between townships 17 and 24 north, and bounded on the east by the principal meridian. This included town 18, north of range 3 west, wherein are located the lands involved in the present suit, the original survey of which was made by Nicholson. It appears from the report of the Commissioner of the General Land Office for 1849 that Mr. Burt was employed to fully examine the district which included the lands in question. The plats of 280 townships were furnished to Burt and to Risdon, another surveyor, to the latter of whom was assigned the examination of the lands not assigned to Burt. It was further stated in the Commissioner's report that the returns of surveys in seven districts embracing ninety-one townships, some of which were made by Nicholson, were grossly fraudulent, "the greater portion of the field-notes thereof being wholly fictitious or descriptive of lines and corners that were never established." That the survey in the district of lands in question was contracted by Nicholson. and that examinations of his work made in every township showed that it "was bad throughout." The report also contained an estimate that an additional appropriation of \$20,000 would be required for correcting erroneous and fraudulent surveys in Michigan. At the next session of Congress the subject of an appropriation for resurveying and correcting erroneous surveys came under consideration, and it appears from an extract from the Commissioner's report contained in Executive Document No. 2, Senate, that the general condition of the surveys in that State was fully understood, as well as the measures being taken in the Land Department for correcting them by resurveys. In this report which the Senate had before it was a map of the State which showed the condition of the surveys therein and indicated the towns defectively surveyed Among those defectively surveyed was township 18, north of range From all this and from other facts shown by the record of this case, and of which the court might take judicial notice, the general facts sufficiently appear that prior to September 28, 1850, the General Government in response to the request of the State and with its knowledge had undertaken, and was then carrying on, extensive resurveys of the public lands in the State for the purpose of correcting those which were false, and supplying such portions of the original surveys as had never been made in the field at all: that as fast as the resurveys were made they were returned to the surveyor general's office and were furnished to the local land offices in the State, and that by general directions to those officers from the Land Department, the old surveys were cancelled and the new surveys were adopted as the guide for the disposition of the

469 lands, and that the lands were disposed of on the basis of the new surveys. It is true as appears that there was some disregard of this practice at some of the local offices; but it also appears that as soon as this disregard of instructions was brought to the attention of the Land Department it was disapproved and im-

mediately corrected.

This was the state of things when the swamp-land act was passed September 28, 1850. In order to ascertain what lands passed to the State under the provisions of this act the Commissioner of the General Land Office sent instructions to the surveyor general to make out lists of the land, and in these instructions the Commissioner said to the surveyor general: "The only reliable, data in your possession from which these lists can be made out are the field-notes of the surveys on file in your office, and if the authorities of the State are willing to adopt these as the basis of these lists, you will so regard them. If not, and these authorities furnish you satisfactory evidence that any lands are of the character embraced by the grant, you will so report them." A copy of these instructions was sent to the governor of the State. The legislature of Michigan by act No. 187 of the Laws of 1851, page 322, resolved to "adopt the notes of the surveys on file in the surveyor general's office as the basis upon which they will receive the swamp lands granted to the State by an act of Congress September 28th, 1850." Lists of the swamp land

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were made out by the surveyor general from the field-notes of the surveys then on file in his office, which lists were furnished to the Commissioner of the General Land Office. When these lists had been purged of the descriptions of lands sold by the United States prior to the date of the grant, they were presented to the Secretary of the Interior for approval. Among others, such a list including the descriptions in question was approved by the Secretary of the Interior on the 27th day of October, 1853, and was transmitted by the Commissioner of the General Land Office to the governor of Michigan, by letter dated January 13th, 1854, saying that he transmitted "a certified copy of list number 1 of swamp and overflowed lands selected and enuring to the State in the district of land subject to sale at Ionia taken from the original files in this office, which on the 27th day of October, 1853, was approved by the Secretary of the Interior." This list included the lands in suit and a large quantity of other lands. In the margin of the descriptions contained in town 18 north of range 3 west was written the letter "F" which was explained in the accompanying certificate to mean that the survey of that township had been reported as fraudulent. Upon the reception of this list by the governor and on January 31st, 1854. he forwarded to the Commissioner of the General Land Office a request for a patent of the lands contained therein "conveying the fee-simple title in said lands to the said State of Michigan." This request was not complied with at the time nor until March 17th, 1857. when, the surveys having been completed, the character of the land ascertained and the lands which were fraudulently reported

470 originally as swamp but afterwards shown not to be so, expunged from the lists, a patent was issued which recited that it was in pursuance of the request of the governor of January 31st, 1854. The resurvey of the township in question had in the meantime been made and the patent did not contain any of the lands in that township. Up to and at the time when the abovementioned approved list was transmitted by the Land Department to the governor of Michigan, the examinations of the old surveys and resurveys were going forward in the land district in which the lands in suit are located, and reports had been made to the Land Department by the surveyor general relative to the lands in the district, stating that "this entire section of country has until recently been considered low, level and swampy with pine, cedar, balsam and hemlock ridges, cold, sterile and unfit for cultivation. The furthest possible from this are the facts in reference to this region," and that, "in some instances in the original survey, lakes covering many hundred acres have been laid upon the maps where none existed, thus covering with water a large area of beautiful country which but for these frauds, might long since have been opened for sale and settlement."

In the report of the Commissioner of the General Land Office for 1853 which must have been made up at about the time when the certification of the list in question was pending in the office, it appeared on the authority of the surveyor general that in the townships recently surveyed, "portions of the lines were run and found

to be established; other lines were run, but seemed never to have been corrected, while other portions of the survey were found to be entirely fraudulent, no lines ever having been run." It was further stated in that report that "the examinations in the four districts embraced in my present estimate represent that in many of the townships no lines have ever been run. They also serve to show. as all examinations of defective surveys have ever done, that the field-notes of the original surveys are no index to the true and real character and value of the country of which they purport to give a faithful description." "Instances are numerous where valuable agricultural and pine lands are found to exist in place of what has been reported as dense and in some cases impassible swamp or nearly worthless lands." The report estimated that an appropriation of \$20,160 would be required to complete the work, and it appears that Congress made the appropriation as requested. 10 Statutes at Large, 565.

On the 29th day of October, 1853, two days later than the date of the Secretary's approval of the list of lands in the Ionia district, and while that list was still in the office, the surveyor general transmitted a supplemental list of swamp lands in that district to the General Land Office, stating that in obedience to instructions from the Commissioner, he had "indicated in the heading of this list that it is intended to abrogate and supersede all lists of swamp lands

heretofore made of townships contained in it." To this the
Commissioner replied on November 7th, 1853, saying, "Your
letter of the 29th ultimo transmitting supplemental list of
swamp and overflowed lands in the Ionia district, Michigan, intended to abrogate and supersede all lists of swamp lands heretofore made of townships contained within it has been received. The
original list will be altered so as to conform to said supplemental
list."

Resurveys in this and other districts in the State went on. The Commissioner of the General Land Office in directing the making of such surveys by the surveyor general instructed him that "the lines will have to be run, and the corners established as if originally, and all the irregular-lines and corners must be most carefully and thoroughly obtained." As fast as they were completed they were transmitted with the proper plats to the General Land Office and to the local land offices in the several districts in the State, where, by the instructions of the department they superseded "the old and fraudulent survey-" which were to be treated as "abrogated;" and since that time the business at the general and local offices has been conducted upon the basis of the new surveys. The resurveys in Michigan were continued until as late as 1857, and Congress made special appropriations therefor nearly every year from 1845 to 1856, inclusive.

On the 18th day of May, 1858, the surveyor general transmitted to the General Land Office a supplemental list of swamp lands which included town 18, range 3 west, and stated in the heading thereof that it was intended to supersede lists theretofore made of swamp lands within the townships contained in it. This list did not in-

clude the lands in question, and many other lands included in the original list were dropped, and many not included in the first were included in the later list. A list of lands designated in the record as list No. 10, Ionia, containing the lands in this township which were contained in the surveyor general's list last mentioned was approved by the Secretary of the Interior May 15th, 1866, which was forwarded to the governor of Michigan on May 26th by letter from the Commissioner saying: "You will please to acknowledge the receipt of said list, and transmit your request for the patent to issue. on the receipt of which or as soon thereafter as practicable, patent will be issued conveying the fee-simple in said lands to the State." The governor acknowledged the receipt of this list on May 31st, 1866, by letter in which he says, "I have the honor to request that the patents for said lands may issue to the State of Michigan as soon as practicable conveying the fee-simple title thereof to the State." On June 21st following, patent was issued accordingly conveying among other lands those in town 18, north of range 3 west, but not the lands in controversy here.

On February 24th, 1855, the Commissioner of the General Land Office having received from the surveyor general a list of all resurveyed swamp lands, addressed a letter to the governor of Michigan stating that he had received such a list which he said "abrogates and supersedes all lists of swamp lands heretofore made of the

townships contained within it." After giving a list of townships, he adds, "The original selections in the foregoing townships made from the defective plats, were approved in lists numbers 1, 2 and 3, Ionia district, Michigan, certified copies whereof were transmitted to your predecessor January 13th, 16th and 18th, 1854. In consequence of the alteration necessary, by reason of the list recently received, I have the honor to request a suspension of all action upon the lists heretofore furnished you, so far as these several townships are concerned, until the differences can be ascertained and adjusted." List No. 1 of January 13th, 1854, above mentioned is the one upon which the plaintiff founds its title. The governor took action in accordance with the request. In the report of the commissioner of the State land office for 1855, the above letter to the governor was mentioned, and the commissioner saying that his office had been notified of the resurvey by the General Government of considerable tracts embraced in the lists of swamp lands principally in the Ionia district, added, "and the same have been, as directed, marked as suspended on our books." Township No. 18, range 3, was not included in the above list, but, as already stated, was included in the original survey and certificate. The transaction is given as a sample of the methods by which the land grant was adjusted, and because of its particular relation to the lands involved in the present controversy. In the report of the commissioner of the State land office for the following year, 1856, speaking of the swamp lands, he said: "Patents are now received for all these lands in the State except those situated in the Ionia land district, comprising about 1,200,000 acres, and for these we are assured the patents will soon be forwarded, the making of which have been delayed in consequence of extensive resurveys by the General Government, which in some instances change the amount and character of the land." "Public sale or offering has not been deemed advisable until after the title of the State to the grant should be wholly confirmed by the issue of the patents, and the numerous corrections and restatements of the lists necessary to

be previously made by the department at Washington."

Further correspondence between the officials of the State and the General Government, and the several reports of the commissioner of the State land office during the years while the settlement of the grant was pending, show that the course above adicated was pursued throughout. The evidence on this subject is quite voluminous, and it is impracticable to do more than to state its general results. It is pertinent to add in this connection that the legislature of Michigan in 1857 in a law providing for the sale of the swamp lands coming to it by the grant forbade the making of such sales until the patent therefor had been received from the United States.

The proceedings for the adjustment of the grant went on until in 1869 the commissioner of the State land office reported that the entire amount of swamp lands conveyed to the State by the act of Congress had been patented with the exception of about 35,000

acres in Cheboygan county, which consisted of an Indian reservation, the title thereto not having been extinguished. Some fugitive pieces have since that time been discovered and patented to the State, but the business was substantially closed

as early as 1868.

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The lands in question and others in the same plight were sold at auction after public advertisement at the land office at Ionia in November, 1869. No objection appears to have been made to the

same on behalf of the State.

Upon the trial the plaintiff offered in evidence the records and files of a suit tried in 1849 in the circuit court of the United States for the district of Michigan, brought by the United States upon the bond of Nicholson who surveyed the lands in suit, which resulted in a verdict for the defendant, and that upon the question arising as to whether a new trial should be applied for, the surveyor general instructed the district attorney not to proceed further, upon the advice of the district attorney that the verdict would eventually be for the defendants: which offer was rejected by the court, and the plaintiff excepted.

Having stated the case as above, Severens, district judge, delivered the opinion of the court:

The propositions upon which the plaintiff maintains its right to recover in this case are these, in substance:

First. That the swamp-land act of 1850 operated to convey the title to the lands proposed to be granted to the State in presenti.

Second. That the ascertainment of the lands granted was delegated to the Secretary of the Interior to be performed by such method as he should deem expedient.

Third. That by his approval, and the certification thereof, of the list including these lands, and the transmission thereof to the governor of the State January 13th, 1854, the title attached to the lands and became irrevocably vested in the State.

Fourth. That the subsequent transactions between the General Government and the State did not operate to impair the title thus

vested.

It is further claimed that the act of 1857 operated to fix the title in the State if the lands had not been so identified that the title had already vested. The latter claim will be discussed in another

The first of the above propositions must be conceded. Whatever doubt may have once been entertained, such has become the established doctrine as settled by a long line of decisions from Railway Co. vs. Smith, 9 Wal, 95, to Cunningham vs. Lake Superior Ship Canal, Railway and Iron Co., 155 U.S. 354. The second proposition may also be conceded. In a wide sense it would be subject probably to some limitations which for the purposes of this case need not be stated. There can be no doubt that while acting within the limits of his authority, the choice of methods was left to the

Secretary.

The third and fourth propositions involve questions of vital and far-reaching import. If in the circumstances in 474 which the swamp-land grant found the land surveys in Michigan, and as we understand, in some other States also, and in which the grant was adjusted in that State, and notwithstanding the co-operating action of the General Government and the State in that adjustment, it is competent now to assert a title in the State which it is competent to convey, founded upon the original surveys and certifications long since superseded because found erroneous or mistaken and contrary to the purpose of the law, the consequences may be very serious indeed. If all the land, whether swamp or arable, which was once certified upon the original fraudulent survevs, can now be claimed and sold by the State, it is obvious that much disturbance of titles and of what has since been done, must The swamp lands in Michigan, owing to its peculiar topography, were widely scattered through the State. The land in the State of all descriptions has nearly all been sold and it has been sold as finally surveyed after the discovered frauds were corrected. The old surveys and the new would not be uniform, but would overlap, or spread apart, leaving gores and fractions between. The lands in Michigan covered by this grant amounted to very nearly six millions of acres, being almost one-sixth of the entire area of the State

In effect the plaintiff's contention amounts to this: that no matter how gross the error or from what case proceeding, the Secretary of the Interior, when once he had certified a list of lands as falling due to the State under the grant, was without power to rectify it, though no patent had been issued and the rights of no third party had become involved by purchase from the State; and further that the Secretary had no power to do this with the consent of the State.

We do not think this doctrine can be sound. The identification of the lands affected by the grant was left to the Secretary. The mode of doing this which was suggested by him involved concurrent action by the State. The proceedings on both sides should be construed in the light of existing circumstances, and not arbitrarily without regard to them. And the intention with which each step was taken and its purpose should be gathered from all that was mutually done and expressed with reference to the subject. Surely these rules are not too wide to be applied to a great governmental transaction like this. It was said by Judge Graves in delivering the opinion of the supreme court of Michigan in Dale vs. Turner, 34 Mich. 405, 416: "There is no occasion to assail the position that the swamp-land act was sufficient to work an immediate transfer of the class of lands to which it was applicable. Because, if it was so, it was still within the power of the State and the United States, the parties to the grant, to agree, in the absence of any conflicting right, that sales made by the United States subsequent to the swamp-land act, should be respected by the State and be left to be completed by the United States by conveyance, and that the State should resort to the United States for equivalents." This case, as does also that of The State vs. Flint & Pere Marquette R. R. Co., 89 Mich.

475 481, asserts in an unequivocal manner the capacity of the State for active participation and negotiation in the settlement of the grant; and it would seem that its officials charged with the duty of acting in its behalf in that regard should be deemed its

representatives.

While it is not now questioned that the act of 1850 transferred the title to the granted lands in presenti, yet the identification of the lands so that the grant should attach to particular parcels was another matter, and whether a selection of lands was intended to be provisional or final was a question of intention to be gathered in the light of all the circumstances. And while we cannot refer to the understanding with which the law was executed to construe the act of Congress, we think it is competent, if such understanding of the law can be ascertained, to take it into consideration in determining the consequences intended by the parties from their acts. It was not until the year 1869 when the case of Railway Co. 18. Smith, 9 Wal. 95, was decided that the doctrine now accepted in regard to the time when the title should be deemed to have vested under this grant, was settled. Differing views had been entertained, and in many quarters it was thought that the title did not vest until the issuance of the patent as required by the second section of the act. Now, we think no one can read the record of what was done in the administration of the grant in the State of Michigan without having a very strong impression that what was done was upon the understanding that the title would not pass until patents were issued-or, to say the least, that it was thought that the safest way was to act upon that presumption-and that the State as well as the Secretary governed themselves accordingly.

The supreme court of Michigan, in Dale vs. Turner, 35 Michigan 405, construed the act of the legislature of the State of June 28th

1851, adopting the field notes as the basis on which the grant would be received, as importing an understanding that the title would not be obtained until patents were received, and the whole tenor of the subsequent transactions indicates that this view continued to be What was done was regarded as part of a proceeding which was in fieri until the patent should be issued, and this was expected to come when the surveys were finally completed and reliable data for making a just segregation of the swamp lands should be obtained. We also think it clear that the field-notes mentioned in the act last referred to were intended to be the lawfully established field-notes and not those which had been rejected, or having been impeached, would probably be wiped out. It would have been a comparatively short piece of work to have simply made out the lists from the notes of the original survey. It was for the interest of the State itself as well as of its citizens that the resurveys should be completed and the frauds of which it had complained should be corrected. It would then know what it was getting, marked and defined by an actual survey made by the recognized authority, and

in harmony with the system upon which contiguous lands would be sold and owned, and for its honor, that what was awarded to it was according to its rights, and not the fruit

In passing, we may advert to a complication arising in the present case. The declaration describes the lands which it seeks to recover by the descriptions of the Government survey, and this without more must be deemed to refer to the recognized and authorized survey. A judgment in its favor thereon would establish its title accordingly and entitle it to be put in possession of the lands thus described, and the marshal would have no other guide than the description in the declaration and judgment. Whether that would correspond with the old survey, the court has no means of knowing. The presumption is that it would not, for the old was

erroneous and the new is presumptively correct.

For these and such reasons the State suspended from sale lands contained in selections already made, upon request of the Commissioner of the General Land Office, and when new lists expressly intended, and known to be intended, to supersede the former selections were received from the General Land Office, they were adopted by the State and patents requested thereon by the State officials charged with that duty. The State also in its legislative capacity knew how the adjustment was going forward. The reports of the commissioner of the State land office showed it, and the legislature of 1857 enacted a statute to forbid sales of lands before patents were received. That statutory provision has ever since been in force. Section 2 of act No. 130 of the Laws of Michigan for 1883, upon which Sparrow obtained his patents for the lands here claimed by the plaintiff. seems to indicate that the lands appropriated by the State and authorized to be patented, were lands which were subject to sale, and as these were not, because no patent had been received for them, we have difficulty in finding the authority by which the patent issued to Sparrow. This is a question not submitted by counsel, and therefore we do not pursue it. There are sporadic instances shown by the record where State officials have started suggestions of doubts whether the State was getting all it was entitled to, and of claims for more, but they were either never insisted upon by the

State, or were settled by adjustment.

We are, therefore, of opinion that it was not intended by the Secretary of the Interior, nor expected by the State, that the selection of swamp lands certified and transmitted to the governor on the 13th day of January, 1854, and which included the lands claimed by the plaintiff should be necessarily final, but that it was intended to be subject to correction to the extent that the facts shown by the resurveys should require, and that upon its being proven by the resurvey that these lands were not swamp, it was competent to supersede the selection by a correct one.

But if this were not so, we should still be prepared to hold, that where, as in this case, a selection had been made and approved under a mistake of facts induced by a false and fraudulent

477 survey whereby lands had been certified which were not swamp and to which the State had no right whatever, and the rights of no third party had intervened, it was competent for the Secretary, on discovering the error at any time before issuing the patent, to correct the wrong by recalling his certifications; not upon "mere error of judgment, but that character of mistake which affords a ground of relief in a court of equity." 5 Land Decisions, p. 31. The Secretary under this grant would exercise his powers consistently with his general authority over the public lands. He had plenary and exclusive power to direct the surveys, to cancel such as he found erroneous, and to order resurveys as the necessities of every occasion should require. He had the power and was charged with the duty of supervising the method by which granted lands should be passed to the beneficiary. If mistakes were committed by his subordinates, the results of which, if suffered to stand, would be to accomplish a wrong, he had power to correct them. If they were made by himself, his duty was as plair and his power no less ample. "The obligations of his oath of office oblige him to see that the law is carried out, and that none of the public domain is wasted or is disposed of to a party not entitled to it. He represents the Government, which is a party in interest in every case involving the surveying and disposal of the public lands."

Knight vs. U. S. Land Association, 142 U. S., 161, 181.

The Secretary could not abdicate his functions. Nor could be assume any obligation by agreement with the State which would bind him in the discharge of his duty to the General Government. The business in which he was engaged was not that of contract, but the exercise of a delegated authority. That duty rested upon him in the transmission of the lands intended by the grant. By the act in question the proceedings in his department extended from the first step to be taken for the identification of the lands to the issuance of the patent to the State whereupon they became "subject to the disposal of the legislature thereof." The Attorney General in

speaking of the patent required to be issued to the State by the second section, in 9 Op. Att'y Gen. 255, said, "The object of that clause was undoubtedly to prevent the legislature of the State from a premature interference with lands before they were so designated

as to preclude mistake and confusion."

The Secretary may prescribe methods, as he prescribed a method here, for the conduct of business, and "when proceedings affecting title to lands are before the department the power of supervision may be exercised by the Secretary, whether these proceedings are called to his attention by formal notice or appeal, and it is sufficient that they are brought to his notice. The rules prescribed are designed to facilitate the department in the despatch of business, not to defeat the supervision of the Secretary. For example, if, when a patent is

about to issue, the Secretary should discover a fatal defect in the proceedings, or that by reason of some newly ascertained fact the patent, if issued, would have to be annulled, and that it would be his duty to ask the Attorney General to institute proceedings for its annulment, it would hardly be seriously contended that the Secretary might not interfere and prevent the execution of the patent. He could not be obliged to sit quietly and allow a proceeding to be consummated, which it would be immediately his duty to ask the Attorney General to take measures to annul. It would not be a sufficient answer against the exercise of his power that no appeal had been taken to him and therefore he was without authority in the matter."

Pueblo case, 5 Land Dec., 494.

So here, if the title of the State was irrevocably vested in this land by the certification of the Secretary, and there was no duty left but the mere issuance of the patent notwithstanding the discovery of the mistake, he could have been compelled by the court to issue it. When issued, the court would not under the settled rule vacate it on account of the original mistake, for that had been discovered by the Secretary before the patent was issued. Thus the mistake would be irretrievable.

The language of the Secretary in 5 Land Dec., 494, last cited, was quoted and approved in Knight vs. U.S. Land Association, 142 U.S., 178, and the doctrine fortified by reference to former decisions of

the court, citing,

Maguire vs. Tyler, 1 Beach, 195, 9 Wal. 650, 661.

Snyder vs. Sickles, 98 U.S., 203, 211.

Buena Vista County vs. Iowa Falls, etc., Railroad, 112 U. S., 165, 175.

And it was further held in that case that the Secretary could take action for the correction of such mistakes on his own motion and that he need not await a contest. It cannot be denied that the power to do this is lodged somewhere. After the patent has issued or, when, under the granting act no patent is required, all things contemplated by the act have been done, the court is the proper forum in which to deal with the case. But when the patent is re-

quired by the act it would seem that Congress intended the Secretary's supervision to continue until all things contemplated by the act have been accomplished, by its issuance. This distinction in the jurisdiction has been adverted to in previous discussions and appears to be a recognized and established one. It has certainly been acted upon for many years in the Land Department of the United States, and although there is no express decision of the Supreme Court turning on the precise point, yet it has been clearly recognized in several cases as denoting the line between the boundaries of the jurisdiction of the department and of the courts.

Counsel for the plaintiff are mistaken in the suggestion which they make that the doctrine that the Secretary has power to correct his own errors in certifying lands before patent origi-479 nated with Secretary Lamar in 1886. It may be that there was never so definite and formal a promulgation of the doctrine before that time, but the record in the present case shows that it was asserted and acted upon many years before. It passed unchallenged at the time. It was then and has continued to be a rule by which the practice of the department has been governed. After the lapse of this long period we do not think it competent, at least unless the unlawfulness of the practice is clear and plain, for private individuals having no interest to protect, to buy into the ground of controversy and challenge the validity of a proceeding of this character upon the foundation of which other interests have been established and now repose.

It is not claimed that these lands were in fact swamp, but the plaintiff founds its right upon the Secretary's certification of the list in which they were included, as upon a judgment irrevocably

concluding that question.

The rule has often been stated and applied that when under a grant transferring the title in presenti the lands have been identified in the manner prescribed by the act, the title to the particular lands so identified becomes vested in the grantee. But these are cases where all had been done which the statute contemplated as necessary to complete the title, or if in any case it fell short of that, there were no countervailing equities. Some of the more recent cases on this subject are,

United States vs. Schurz, 102 U. S. 401. Wright vs. Roseberry, 121 U. S. 502. Cragin vs. Powell, 128 U. S. 691. Tubbs vs. Wilhoit, 138 U. S. 146. Williams vs. United States, 138 U. S. 514. Knight vs. U. S. Land Association, 142 U. S., 161. Noble vs. Union River Logging Co., 147 U. S. 165.

And the case of

Barden vs. Northern Pacific Railroad Co., 154 U. S. 288, where in the opinions delivered there is a general discussion of the subject. In the case of Noble vs. Union River Logging Co., 147 U. S., 165, the Secretary, on the approval of the location of the railroad was functus officio. That was the only duty devolved upon him; and further, it was not bound up in another subject over which he had general authority. Besides from the nature of the subject, Congress must have understood when making the grant there in question that the approval of the Secretary would be presently acted upon by the railroad company, and a situation created where great hardship would ensue if the approval should be revoked. That being so, it was reasonable to regard the act as intending the Secretary's approval to be final when once made.

And in the case of Wright vs. Roseberry, 121 U.S., a case much relied on by the plaintiff, certain propositions are stated, which counsel take from the opinion and lay down upon this as rules and measures by which we should be governed in our decision.

We do not question the correctness of the doctrines announced 480 in that case, nor if we did, should we feel at liberty to disregard its authority. But that case is to be construed as all decisions are, by reference to the facts involved and the questions presented for decision, and not as an announcement of propositions which would be unaffected by other facts and the application of other principles which the presence of such facts would involve. And, however correctly that case states the law, we must here take notice of "certain equitable considerations which the department is authorized to recognize;" and in regard to which, "when recognized, no court will ever disturb its action," as was said in Williams vs. United States, 138 U.S., 514, 523, in dealing with certain propositions relating to this general subject, the correctness of which was not doubted. What has been said is of general application to the cases cited.

The rulings of the Interior Department at least in recent years, have uniformly maintained the right of the Secretary to revoke a certification or other equivalent act before patent, on the ground that it had been inadvertently made and was erroneous in fact.

Lachance vs. Minnesot				
State of Oregon,	5	6.6	4.6	31.
State of Oregon,	5	44	4.6	300.
State of Oregon,	5	4.6	6.6	374.
State of Minnesota,	6	66	"	637.
State of Michigan,	7	"	6.6	514.
State of Oregon,	7	44	44	572.
State of Wis. v. Wolf,	8	66	6.	555.

There are other decisions of the same import. And there is no decision of the Supreme Court impugning that right when exercised under an act of Congress contemplating a supervision of the proceedings until completed by the issuance of a patent. On the other hand, the rulings of that court have been in conformity with the practice and decisions of the department. On their own account these decisions of the department are very persuasive as to what the law is, and as multitudes of titles have been founded upon them, they ought not to be disturbed except for very cogent reasons.

Hastings and Dakota R. R. Co. vs. Whitney, 132 U. S., 357. Knight vs. U. S. Land Association, supra. We now come to the consideration of the act of March 3rd, 1857, 11 Stat. at Large, 251. That act provided that the selection of swamp and overflowed lands granted by the act of 1850 "heretofore made and reported to the Commissioner of the General Land Office so far as the same shall remain vacant and unappropriated, and not interfered with by actual settlement under any existing law of the United States, be and the same are hereby confirmed and shall be approved and patented to the several States in conformity with the provisions of the act aforesaid as soon as may be practi-

cable after the passage of this law."

Delays had occurred in the proceedings in the Interior 481 Department for the ascertainment of the lands intended to be transmitted under the grant. This act was passed to expedite them. There is nothing in it which indicates any purpose to enlarge the grant. Nearly all the States had chosen to select the lands for themselves and to furnish proof that the lands were of the character mentioned in the granting act. By the terms of the eption extended to the States for the taking of lands under the grant, in case they were not taken by the field-notes, the State authorities were required to furnish to the surveyor general satisfactory proof of the character of the lands included in their selections. It is contended by counsel for the defendant that the act of 1857 was intended to apply to those cases only; and there is some plausibility in the argument made in support of that theory. But as it was customary to speak of the lists made up by the surveyor general in the State which elected to select their lands on the basis of the United States survey as "selections," it seems doubtful whether such selections were not included. We shall not, however, decide that question, being of opinion that the act was not intended to include a list which was in the situation of the one under which the plaintiff claims. The list had some time before been acted upon by the land department and was expected to stand except in so far as it should be impeached for fraud or error by the resurveys. Congress knew that those resurveys were going on. For several years it had been making appropriations therefor. It was a matter of public record that the surveys on which it was based were fraudulent and that where the resurveys had developed the fraud and corrected the errors, all traces of the old survey were obliterated. The old survey had been rejected by competent authority. As was said in Knight vs. U. S. Land Association, supra, a rejected survey is no survey, and inoperative for any purpose. New lists had been made and filed in the Commissioner's office based upon the new survey, and the plats made in conformity therewith. It was held by the Secretaries of the Interior, and we think with sufficient reason, that the act was not intended to confirm old lists founded upon the first survey which had been thus superseded. It was so held by Secretary Vilas in 7 Land Dec. 525; by Secretary Noble in 8 Land Dec. 387; and this is confirmed by the ruling of Secretary Thompson, 1 Leslie's Land Laws, 560.

And further, we are of opinion that it was not intended by this act to override the general power of the Secretary to correct frauds

and mistakes in the preparation of the lists thereby confirmed, and that upon a just construction of the act such frauds and mistakes remained subject to correction.

Whether upon the application of the doctrine of estoppel the State should be held to be precluded by the acceptance of the new selection which was expressly confirmed as in lien of the old one,

and upon which new selection it accepted patents for other lands than those included in the first, we have not found it necessary to determine. It was held by the supreme court of that State upon similar facts in State of Michigan vs. F. & P. M. R. R. Co., 89 Michigan, 481, that the doctrine was applicable, and it was applied to an attempt made on behalf of the State to assert

title to lands of which it had received an equivalent.

We think there was no error in the rejection by the court of the plaintiff's offers in evidence of the record of the suit of the United States against Nicholson and his bondsmen, in the circuit court of the United States for the district of Michigan. That case was not between the parties in the present suit and could bind neither of them in respect to the subject-matter of this. Besides, there was nothing to show upon what facts the case turned, whether upon any circumstance relevant here or not. If the record of that suit had been admitted, it would have had no material effect in view of the prime facts of the present case. The other exceptions relate in the main to the admission in evidence of public documents of which we should take judicial notice and to the correspondence of public officials pertinent to the matters in controversy. None of the rulings excepted to were injurious to the plaintiff, whether any of them were technically erroneous or not. The case was rightly argued upon its main features, and we decide the case by reference to them.

For the reasons stated we think the judgment should be affirmed.

483 And thereupon, on the same day, to wit, May 7th, 1895, judgment was entered in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

MICHIGAN LAND & LUMBER COMPANY, LIMITED, Plaintiff in Error,

CHARLES A. RUST, Survivor, Defendant in Error.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the eastern district of Michigan, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed with costs.

And afterwards, to wit, on the 5th day of June, 1895, the following request not to remand was filed in said court, which reads and is in the words and figures following, to wit:

United States Circuit Court of Appeals for the Sixth 484 Circuit.

MICHIGAN LAND & LUMBER COMPANY,) Error to the Circuit Court LIMITED, Plaintiff in Error,

CHARLES A. RUST, Survivor, Defendant in Error.

of the United States for the Eastern District of Michigan. No. 178. October Term, 1893.

To Frank O. Loveland, Esq., clerk.

SIR: This being a case in which the review and determination of the circuit court of appeals is not final, you are requested not to remand the said cause to the circuit court for further proceedings, as it is the intention of the plaintiff and appellant to carry the case to the Supreme Court of the United States by writ of error.

Yours, &c.,

J. W. CHAMPLIN AND FRANK E. ROBSON, Attorneys for Plaintiff.

And afterwards, to wit, on the 25th day of June, 1895, the following assignments of error were filed in said court, which read and are in the words and figures following, to wit:

485 UNITED STATES OF AMERICA:

Supreme Court.

MICHIGAN LAND & LUMBER COMPANY, LIMITED, Plaintiff in Error.

18. CHARLES A. Rust, Survivor, etc., Defendant in Error.

Now, to wit, on the - day of -, A. D. 1895, comes the said plaintiff in error before the said court, by its attorneys, and says that in the records and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, to wit:

1. In holding that no error was committed by the trial court in not permitting the plaintiff to show by its witness, Oscar Palmer, that prior to 1853 and between 1850 and 1853 that the General Government, through its Land Department, had sold lands in every section by the plats of the old survey, in town 18 north, range 3 west, State of Michigan, and had thus recognized this old survey.

2. In holding that no error was committed by the trial court in not permitting witness Oscar Palmer to testify in answer to the question, "I will ask you if it was not a fact that in this same town

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and some of these sections land was sold. Take 20, 21, 22, 28, and 35, and see if they were not sold on the same section before the resurvey."

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3. In holding that there was no error committed by the trial court in not permitting plaintiff to show by its witness Oscar Palmer that the plat of the old survey of said township 18 north, 3 west, "was a recognized Government survey and in actual use by the Government up to and including March 3, 1857."

4. In holding that there was no error committed by the trial court in admitting in evidence against the objection of the plaintiff, Exhibit 57, being a letter from John S. Barry to the President of the United States, dated February 3, 1842, sending inclosed therewith a copy of joint resolution of the legislature of Michigan, approved February 1, 1842, asking for the resurvey of eighty-one whole and fractional townships in said State, all lying east of the principal meridian except towns 16, 17, and 18 north, of ranges 6,

7, and 8 west.

5. In holding that there was no error committed by the trial court in admitting in evidence against the objection of plaintiff, Exhibit 58, being a letter of E. M. Huntington, Commissioner of the General Land Office, to President Tyler, dated February 17, 1842, returning to the President the letter and inclosure of February 3, 1842 (Exhibit 57), and inclosing a diagram showing the districts referred to in the resolution and stating that the records of the land office showed no evidence of irregularities in the surveys; that all the land except one township was open to private entry, and recommending that the matter be referred to the surveyor general at Cincinnati for examination, on which letter is an endorsement of the President directing such reference.

6. In holding that there was no error committed by the trial court in admitting in evidence against the objection of plaintiff, Exhibit 59, being a letter of E. M. Huntington, Commis-

sioner of the General Land Office, to John S. Barry, governor of Michigan, dated February 21, 1842, acknowledging receipt of the governor's letter of February 3, 1842, with its inclosure (Exhibit 57), and inclosing a copy of the Commissioner's instructions to the surveyor general at Cincinnati, dated February 21, 1842, which instructions were to report any facts in his possession bearing on the matter, and make any suggestions that might occur to him for the correction of the supposed errors and preventing them in the future. A similar diagram to that laid before the President was inclosed, also a letter to Dr. Houghton, of October 22, 1840, from J. A. Rousseau, acknowledging some defects in surveys made by him; also directing the surveyor general to enforce certain standing instructions to deputy surveyors.

7. In holding that there was no error committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 60, being the report of Surveyor General Haines to E. M. Huntington, Commissioner of the General Land Office, dated March 4, 1842, in pursuance of the instructions of February 21, 1842. The report says deputies were appointed on the recommendation of

parties known to the office upon which he must rely for evidence of the integrity of the deputy. As to the Rousseaus he found them employed when he took the office, and the employment was continued. Their work had been in the main satisfactory, and when errors had been found they had been corrected. In the summer of 1840, he had been informed that affidavits had been lodged with the register of the land office at Genesee, Mich., charging irregularities in the surveys. He then details how the letter to Dr.

Houghton came to be written. He had written the register
a number of times, but had received no reply, and doubts the
existence of any affidavits. Had made inquiry at other
sources as to the Rousseau surveys, but failed to obtain any accurate
information. As to the districts of other deputies the letter of in-

structions contained the first information of irregularities.

The surveyor general recommends that Wm. A. Burt and John H. Mullett be employed to examine the towns charged to be erroneous and report their condition, and, if found defective, that new surveys be made at the expense of the contractors or their bondsmen.

He then explains how it might be possible for a deputy to make up ficticious returns of surveys, and says that such impositions had been practiced under some of his predecessors, and suggests that no Michigan official had ever complained to him of the state of the surveys, and that he was yet ignorant of the character of the alleged frauds.

He then makes some suggestions as to providing against future

errors.

8. In holding that there was no error committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 61, being a letter of E. M. Huntington, Commissioner of the General Land Office, to Governor Barry, of Michigan, dated April 21, 1842, inclosing a copy of his instructions of the same date to Surveyor General Haines, issued in consequence of the report of the latter, directing the employment of an experienced deputy to examine the towns alleged to be fraudulently surveyed, and containing some general instructions for such deputy.

9. In holding that there was no error committed by the trial court in admitting over the objection of plaintiff, Exhibit 62,

being the instructions of Surveyor General Haines to Wm. A.
Burt, dated April 11, 1842, Mr. Burt being employed to make
the examination. The letter recites the previous correspondence
with the Commissioner of the General Land Office, and instructs
Mr. Burt to examine and report upon certain towns, sending him
the original field-notes of some of them.

10. In holding that no error was committed by the trial court in admitting over plaintiff's objection, Exhibit 63, being a letter dated August 1, 1842, of Surveyor General Johnson to Thomas H. Blake, Commissioner of the General Land Office, which transmits to the department Mr. Burt's report on towns examined, and makes

some comments on the same.

11. In holding that no error was committed by the trial court

in admitting over plaintiff's objection, Exhibit 64, being a letter dated October 4, 1842, of Blake, Commissioner of the General Land Office, to Hon. A. S. Porter, which acknowledges the receipt of a prior letter, and advises him of the receipt of the report of Mr. Burt, and that the towns examined appeared to be defective and fraudulent, and that it was the design of the office to issue; the

instructions for the necessary resurveys.

12. In holding that no error was committed by the trial court in admitting over plaintiff's objection, Exhibit 65, being a letter dated April 27, 1843, from Wm. Johnson, surveyor general, to Thomas H. Blake, Commissioner, acknowledging receipt of advices that \$4,000 had been set apart for making the resurveys, and stating the sum was not sufficient, and that in consequence the surveys would be confined to the towns nearest the coast, and that three deputies had been instructed to be ready to take the work.

13. In holding that no error was committed by the trial court in admitting over plaintiff's objection, Exhibit 67, 490 being a letter dated September 16, 1844, from Wm. Woodbridge to Blake, Commissioner of the General Land Office, urging the appropriations for surveys in Michigan, and particularly the prosecution of the work of resurveying the towns alleged to have been fraudulently surveyed, and alleging that the Genesee land office was selling lands by the plats of the old survey after new one made.

14. In holding that no error was committed by the trial court in admitting over the objection of plaintiff, Exhibit 68, being a letter of Commissioner Blake to Hon. Wm. Woodbridge, dated September 30. 1844, acknowledging receipt of his letter of the 16th, stating that \$15,000 had been apportioned to the surveys for the district of Ohio, Indiana and Michigan, and that under instructions to the surveyor general practically the entire sum would be expended in Michigan; that instructions had been issued for certain resurveys; that the land officers at Genesee had been written to regarding the

alleged sales by the plats of the old survey.

15. In holding that no error was committed by the trial court in admitting in evidence over the objection of the plaintiff, Exhibit 69, being a letter of Blake, Commissioner of the General Land Office, to the register and receiver of the land office at Genesee, Michigan. dated October 1, 1844, stating he is advised that the plats of the old survey are being used in making sales, and desires to know the reason, and that these plats should have been canceled on receipt of the plats of the new survey, and proper reference made, and that the plats of the fraudulent survey should not be used.

16. In holding that no error was committed by the trial 491 court in admitting over the objection of plaintiff, Exhibit 71, being a letter to Richard M. Young. Commissioner of the General Land Office, to Hon. A. Felch, dated February 17, 1849, stating that he had written Hon S. Breese, chairman of Committee of Public Lands, requesting the appropriation of \$10,000 for the correction of erroneous and defective surveys in southern Michigan.

17. In holding that no error was committed by the trial court

in admitting over objection of the plaintiff, Exhibit 72, being a letter dated February 17, 1849, from Richard M. Young, Commissioner, to Hon. S. Breese, requesting the insertion of \$10,000 in the appropriations for the correction of surveys in Michigan.

18. In holding that no error was committed by the trial court in admitting in evidence over the objection of plaintiff, Exhibit 73, being a letter dated July 10, 1849, from Lucius Lyon, surveyor general, to Justin Butterfield, Commissioner, which acknowledges letter of the 4th ult. from Mr. Butterfield's predecessor, advising of appropriations for surveys in Michigan, and containing certain instructions as to resurveys. Commenting on these instructions thinks it better and less expensive to make entire new surveys rather than attempt joining old lines to new ones. That Mr. Burt and Mr. Risdon were then in the field making examination of surveys, their compensation to be such as the Commissioner sees fit to allow. These examinations the surveyor general considers necessary in order to ascertain what frauds have been committed in the surveys, also as useful in determining how the appropriation of \$10,000 would be expended. Reports had been received from Mr.

Burt up to the 3rd of the last month, but none from Mr. Risdon.

19. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 75, being a statement entitled "Resurveys in the State of Michigan," signed by Moses Kelly, clerk, dated "General Land Office, Feb'y 14, 1851," being a general resume of the correspondence between the Land Office and the surveyor general and the State of Michigan and the action of Congress in making appropriations from time to time, the principal particulars of which are con-

tained in Exhibits 57 to 74, inclusive.

20. In holding that no error was committed by the trial court in admitting in evidence over the objection of the plaintiff, Exhibit 79, being a letter dated February 10, 1852, from Surveyor General Noble to Commissioner Butterfield, inclosing a report of Deputy Surveyor A. S. Wadsworth. The letter acknowledges receipt of a letter from the Commissioner of November 25, and incloses a diagram representing the townships already resurveyed, districts reported fraudulent, and states that the balance of the prosecution of the resurveys, should they be ordered without reference to the suits pending in the United States court, would be substantially as proposed in the letter of the 5th of March, 1851. He considers the district west of Saginaw bay of the first importance for resurvey, and continuing with districts near Grand Traverse bay, until all are completed. Commenting on certain rules sent in a letter from the Commissioner under date of June 25 last, he considers them of a restrictive character, and that it does not appear that the present practice of the office was in conflict with the principles therein contained, but thinks no instructions can meet the exigencies of every case, but much must be left to the judgment of the

deputy. The employment of codeputies he considers involved with practical difficulties and productive of little good. In the mineral regions, where the solar compass is used, the most of

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the work must be done in fair weather, and that possibly there an assistant to run random lines might be useful. In disconnecting the examinations from the work of resurveys the expense to the Government had been increased. In fixing the price for resurvey where the districts are near the coast the maximum price of \$6 has not been allowed, but has been where the districts were in the interior. He recommends that, if a further examination of resuryevs is deemed necessary, that they should be disconnected from resurveys or new surveys, and that in townships where sales had been made or lands are occupied, that the portions sold or occupied should be treated as private claims, and the new surveys run up to the boundaries of the parcels so occupied. Letter contains other remarks and comments upon the instructions, explaining why it is necessary to deviate from them from time to time, the whole matter being submitted to the judgment of the depart-The report of Mr. Wadsworth bears date December 24, 1851, and purports to give a general view of the character of the country running from Saginaw to Grand Traverse, and from Grand River to Grand Traverse, and towards the straits of Mackinaw, purporting to describe character of the timber, of the soil, and the amount of land which appears to be swampy and the amount which appears to be valuable for farming purposes. Some remarks are also made on the character of the climate at different points within this Territory.

21. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 80, being a letter from Butterfield, Commissioner, to Noble, surveyor general,

dated March 8, 1852, acknowledging a communication of the 10th ult., by the hands of Mr. Frost, the chief clerk, on the subject of the resurveys in this State, and divides the matter of the resurvey of the State into two classes, first, incomplete suryevs, where a portion only of the lines of a township are found to be surveyed, but where some lines have been run and corners established, such portions as can be made available by retaining all remaining undisturbed. The second class are fraudulent surveys, where there is no evidence found of the good intent on the part of the deputy to comply with this contract and an entire absence of the marks and monuments to designate corners, and no lines traceable. In this class of cases the lines and corners found are to be obliterated, except where parcels are occupied and the occupant insists on having the monuments preserved, in which case his requests shall be respected, otherwise they are to establish new lines and new monuments, the work to be inspected before payment to the satisfaction of the surveyor general, these inspections to be paid for at the per diem allowance.

22. In holding that no error was committed by the trial court in admitting in evidence over the objection of the plaintiff, Exhibit 82, being a letter dated June 11, 1847, from Lucius Lyon, surveyor general, to Richard N. Young, Commissioner, stating that in compliance with a request for a computation of the number of acres of swamp land in each district, but a mere approximation to accuracy

can be given, as the old surveys show the swamp only at the intersection with the lines of survey. Not having the Ohio surveys in his possession, he will confine his estimates to Indiana and Michigan.

23. In holding that no error was committed by the trial court in admitting in evidence over the plaintiff's objection, Exhibit 83,

being a letter dated June 7, 1853, from John Wilson, Commissioner, to the surveyor general at Detroit, stating that in adjusting the swamp selections in the Grand River district a difficulty had arisen over the supplemental list dated December 8, 1852. The surveyor general, under date October 4 last, had been instructed to make out these lists in lieu of the former ones. Which in the heading of the list was evidently lost sight of. In certain towns the selections are the same, while in others the supplemental list contains fewer selections. The Commissioner inquires which is to govern, the original or the supplemental list? Whether the supplemental list is to be considered corrective or to be taken in lieu of the original.

24. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 84, being a letter dated July 29, 1853, from John Wilson, Commissioner, to the register at Detroit, transmitting certified copy of approved list No. 1 in his district, and containing instructions as to how the entries concerning should be made in the tract book and in the plats of his office, and to advise the Commissioner of any

errors, etc., he may find.

25. In holding that no error was committed by the trial court in admitting in evidence over the plaintiff's objection, Exhibit 85, being a letter dated July 30, 1853, from John Wilson, Commissioner, to the register at Detroit, transmitting list A, No. 1, of his district, showing selections of swamp land rejected as being disposed of prior to the grant, and instructing him as to the manner of making the entries in connection of the entries made from the surveyor gen-

eral's list, on the books of the office.

26. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit S6, being a letter dated September 5, 1863, from J. M. Edmunds, Commissioner, to the register at Ionia, Michigan, stating that certain descriptions were confirmed selections and would be approved to the State; that certain others, though selected would not be approved, as they did not appear in the list subsequently made by the surveyor general to supersede the previous list, but they must be restored to market in the usual way before they will be subject to private entry.

27. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 87, being a letter dated September 19, 1854, from John Wilson, Commissioner, to Chapman, surveyor general, Detroit, inclosing an affidavit of O. M. Barnes, relating to the character of certain lands in the Ionia district, and that Mr. Barnes had been advised that if the swampy character of the land was doubtful he would be permitted to contest

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the claim of the State, and that from an examination of the plats

and field-notes the Commissioner thinks there is doubt.

28. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 88, being the reply of Surveyor General Chapman, dated September 27, 1854, to the preceding letter, stating that in determining the swamp lands inuring to the State the instructions of November 21, 1850, had been followed, the State having accepted the field-notes and plats as the basis of selections; that this course was followed in making up the lists. In the case in question there are three ways of

drawing the lines, which he illustrates by a diagram annexed to the letters. The selections are based on a survey made in 1826, and the land may then have been of the character granted. Some defects in the affidavit of Mr. Barnes are pointed out, and on the whole is of the opinion that the swamp selection is

correct.

29. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 89, being a letter dated October 6, 1854, from John Wilson, Commissioner, to Chapman, surveyor general, acknowledging receipt of the letter (the preceding assignment) stating none of the three ways of connecting the swamps as indicated in the diagram appear to be proper. In this case he has decided to give Mr. Barnes an opportunity of furnishing evidence as to the character of the land in question, and indicates the character of the testimony to be furnished.

30. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 90, being a letter dated September 18, 1852, from Surveyor General Noble to Commissioner Butterfield, calling attention to the purchase of a tract by Mr. Bartlett of the register at Kalamazoo, prior to the receipt of the swamp lists; that nothing had been heard from the register at Detroit, Flint, and Sault Ste. Marie, in refer-

ence to the lists in their hands for annotation.

A supplemental list embracing all new surveys will be furnished the Commissioners at an early day, and inquiries in regard to towns

resurveyed, which will govern the old or new surveys.

31. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 91, being a letter dated October 4, 1852, from John Wilson, Commissioner, to Noble, surveyor general, requesting him to re-

son, Commissioner, to Noble, surveyor general, requesting him to reexamine his notes and plats as to the tract desired by Mr. Bartlett, and if swamp advise him that the same is not subject to entry and if not to report to the Commissioner's office, and to do the same as to the parcels sold by the register at Kalamazoo. That in making out supplemental lists he should make three copies, one for himself, the register, and for the Commissioner; that in towns resurveyed he should make new lists of selections, designating the lists as being in lieu of the former ones.

32. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 92,

being a letter dated June 24, 1853, from Surveyor General Chapman to Wilson, Commissioner, acknowledging receipt of a letter of June 7; that in making up the supplemental list it should have been stated at the head of the list or in the letter of transmissal that it was in lieu of the former list; that such lists were made up without reference to the old lists or plats. The question as to which list should govern he supposed would be decided by the Commissioner, but thinks the supplemental list should govern, and that hereafter it will be so considered.

33. In holding that no error was committed by the trial court in admitting in evidence over objection of plaintiff, Exhibit 93, being a letter dated October 29, 1853, Surveyor General Chapman to Commissioner Wilson, transmitting supplemental list No. 2, Grand

River district.

499 34. In holding that no error was committed by the trial court in admitting over plaintiff's objection, Exhibit 94, being a letter dated November 7, 1853, Commissioner Wilson to Surveyor General Chapman, acknowledging receipt of the list contained in the foregoing letter, and that the original list will be altered to conform to it.

35. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 95, being a letter dated January 31, 1855, Surveyor General Chapman to Commissioner Wilson, transmitting list of swamp lands in Cheboygan land district, surveyed and platted up to January 15, 1855. With this list he believes descriptions of swamp lands in every township in the State had been transmitted the Commissioner, and asks if it will be proper to furnish new lists as heretofore of lands hereafter surveyed.

36. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 96, being a letter dated February 12, 1855, Wilson, Commissioner, to Chapman, surveyor general, acknowledging receipt of the lists contained in the last letter, and advising him that it will be necessary to

continue to furnish the lists as heretofore.

37. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 97, being the published report of the commissioner of the Michigan State land office for the year ending September 30, 1852, which states that no lists had yet been received of the swamp lands; gives a letter from the General Land Office, dated November 2, 1852, on

the subject, which, referring to an application to have certain lands approved in advance of the regular lists, which lands were in three different land districts, states that a rule had been established not to take action on isolated tracts without taking action on the entire list in that district, as it would retard the final adjustment, but the matter of selections would be acted upon at the earliest possible period.

38. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 98, being a letter dated January 20, 1854, Commissioner Wilson to Governor



Parsons, of Michigan, requesting that he cause to be erased from approved list No. 1, Kalamazoo district of swamp lands, a certain tract erroneously approved, the lands being sold in 1836, to enter in place of it the tract intended to be approved, and to advise the General Land Office of the corrections.

39. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 99, being a letter dated January 30, 1854, Governor Parsons to John Wilson, Commissioner, acknowledging the preceding letter and advising that

the corrections had been made.

40. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 100, being a letter dated February 24, 1854, Commissioner Wilson to Governor Parsons, requesting him to cause the copy of approved list No. 4, Genesee district swamp lands, to be corrected by erasing certain descriptions and in place thereof inserting certain others, and advise the General Land Office if done.

41. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 101, being a copy of Ionia approved list No. 4 from the

State land office, showing erasures in the list with reference to the Commissioner's letter of February 24, 1854 (Exhibit 100, p. 185).

42. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 102, being a letter dated March 31, 1854, from Commissioner Wilson to Governor Parsons, requesting him to cause certain corrections to be made in the copy of Genesee approved list No. 1, by erasures and insertion of descriptions, and as to certain others, inasmuch as they had been disposed of by the General Government subsequent to September 28, 1850, to mark them "Suspended," and to advise the General Land Office of the corrections.

43. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 103, being Genesee approved list No. 1, from the State land office, showing the corrections and annotations requested in the Commissioner's letter, March 31, 1854, with reference to the same.

44. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 104, being a letter dated April 25, 1854, from Commissioner Wilson to Governor Parsons, requesting him to cause the copy of Genesee approved list No. 2 to be corrected by erasing certain descriptions, adding others, and changing other items, and to advise the General Land Office of the corrections.

45. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 105, being Genesee approved list No. 2, from the State land office, showing the erasures, corrections, and additions re-

quested in the Commissioner's letter of April 25, 1854 (Exhibit 104).

46. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 106, being

a letter dated May 19, 1854, from Commissioner Wilson to Governor Parsons, requesting that certain erasures, corrections, and annotations be made on the copy of Genesee approved list No. 3, and to

report the same to the General Land Office.

47. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 107, being Genesee approved list No. 3, showing the erasures, corrections, and annotations requested by the Commissioner's letter of May 19, 1854, with reference to the same.

48. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 108, being a letter from Commissioner Wilson to Governor Parsons, dated July 1, 1854, requesting that certain corrections be made in the copy of the approved list No. 3, Sault Ste. Marie district, and that the General

Land Office be notified of the corrections.

49. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 109, being a letter from Governor Parsons to Commissioner Wilson, dated July, 1854, which acknowledges receipt of the letter of Commissioner Wilson of July 1, 1854 (Exhibit 108), and advises him

that the corrections requested have been made.

503 50. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 110, being surveyor general's list No. 1, Grand River district, from the State land office, so far as it relates to towns. 18 north, 3 and 4 west.

51. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 111, being approved list No. 1, Ionia district, from the State land office of Michigan, so far as it relates to towns. 18 north, 3 and 4 west.

52. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 113, being the patent of the United States to the State of Michigan, known as Ionia No. 2, so far as relates to the lands in town 18 north and 4 west.

53. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 114, being field-notes of the resurvey of sections in township 18 north,

range 3 west, involved in the declaration in this cause.

54. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 115, being a letter from Surveyor General Noble to Commissioner Butterfield, dated April 21, 1852, referring to the letter of the Commissioner of April 13. States that the certificate in the Kalamazoo list does not appear to admit of doubtful construction, and incloses a new certificate for the Grand River list to be substituted for the original, and that the lists as near as practicable be made up

504 strictly in accordance with the instructions of the Commissioner; that the remaining lists would be made up leaving

out the tracts sold prior to September 28, 1850.

55. In holding that no error was committed by the trial court in

admitting in evidence over plaintiff's objection, Exhibit 116, being a letter from Alexander F. Bell, register of Ionia land office, to the Commissioner of the General Land Office, dated September 23, 1854, inquiring whether lands appeared to have been on the maps of the old survey to have been selected by the surveyor general as swamp lands and not appearing on the maps of the resurvey and in the approved list as swamp lands are subject to private entry at his

office.

56. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 117, being a letter from Commissioner Wilson to the register of the land office at Ionia, dated October 3, 1854, and stating that he should regard all selections by the surveyor general as valid until furnished by him with lists designated, "In lieu of the originals in townships resurveyed and platted," and where lands have been approved according to the old plats, no action could be taken by the register until the claim of the State has been rejected.

57. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 119, being a letter from Commissioner Wilson to Governor Bingham, dated February 24, 1855, requesting the suspension of action on Ionia approved lists Nos. 2 and 3, because surveyor general had transmitted to the Commissioner certain lists in the Chebovgan district in townships resurveyed and platted, which lists he states,

"abrogates and supersedes all lists of swamp lands heretofore made of the townships contained in it," giving a list of the 505

towns affected.

58. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 121, being a letter from Commissioner Edmunds, dated June 18, 1864, referring to certain selections, stating that they were made from the field-notes of the old surveys, and most of the selections in those towns were approved and patented to the State on the old surveys prior to the receipt of the selections based on the new surveys, supplemental list D being such a list; and the office had decided that, having acted upon one, they would ignore the other, and therefore the original list based on the old surveys should govern in those townships.

59. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 123, being the plat or resurvey of township 18 north, range 3 west, in the State

of Michigan.

60. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 124, being surveyor general's supplemental list No. 3, Grand River district, from the State land office, so far as relates to towns. 18 north, ranges 3 and 4 west.

61. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 125, being a letter from Surveyor General Emerson to Commissioner Hendricks, dated May 12, 1858, transmitting supplemental lists of swamp selections in the Chebovgan, Grand River and Saginaw land districts of townships resurveyed and platted since the dates of the last supplemental lists, which lists complete the swamp-land lists, with the exception of certain towns yet requir-

ing corrections.

62. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 126. being a letter from Commissioner Hendricks to Surveyor General Emerson, dated May 20, 1858, acknowledging receipt of the lists referred to in the letter of May 12, 1858 (Exhibit 125).

63. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 127, being approved list No. 10, Ionia land district, from the State land office, so far as it relates to towns 18 and 28 north, range 3

west.

64. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 128, being a letter from Commissioner Edmunds to the governor of Michigan, dated May 26, 1866, transmitting a copy of approved list No. 10. Ionia district, and requesting the governor to transmit his re-

quests for patents for the lands contained in it.

65. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 129, being a letter from Governor Crapo of Michigan to Commissioner Edmunds, dated May 31, 1866, acknowledging the receipt of approved list No. 10, Ionia district, and requesting that patents might issue for the same.

66. In holding that no error was committed by the trial 507 court in admitting in evidence over plaintiff's objection, Exhibit 130, being patent of the United States to the State of Michigan, No. 20, Ionia district, so far as it relates to townships

18 and 28 north, range 3 west.

67. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 131, being a letter from Commissioner Drummond to the governor of Michigan, dated March 25, 1873, acknowledging receipt of a letter of the governor's of the 4th inst., asking that certain lands be patented to the State as swamp lands, and advising him that the records show the lands to have been selected in 1852, and shortly afterwards approved, but never patented to the State. Resurveys having been ordered for the townships referred to, new lists were reported which do not contain the descriptions mentioned, and are therefore not recognized by the office as swamp selections. Those in the townships selected by the resurvey are suspended because contained in an Indian reservation.

68. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 132, being a letter from Commissioner State Land Office Clapp to Commissioner Burdett, dated April 15, 1875, transmitting a list of swamp and overflowed lands, contained in supplemental list C,



Cheboygan district, of the townships resurveyed, calling attention to the removal of the reservation for Indian purposes, and requesting that the list of lands be approved and patented to the State at an early day.

69. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 133, being letter from Acting Commissioner Curtis to the gov-

508 133, being letter from Acting Commissioner Curtis to the governor of Michigan, dated November 10, 1875, acknowledging the receipt of a letter of October 28, calling attention to a list of lands in townships 35 and 36 north, range 3 west, and stating that they being found free from conflict, they had been submitted to the Secretary of the Interior for approval to the State as swamp lands.

70. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 134, being approved list No. 22, Traverse City district, the same covering towns

35 and 36 north, range 3 west.

71. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 135, being a patent from the United States to the State of Michigan, No. 35, covering descriptions in towns 35 and 36 north, range 3 west.

72. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 136, being a letter from Commissioner of the State Land Office Clapp to Commissioner Drummond, dated April 30, 1874, transmitting for examination a list of lands contained in supplemental list No. 3, Grand River district, in townships resurveyed, requesting the approval of each parcel, and that patents be issued; or, if that cannot be done, the State may receive indemnity therefor. The lists inclosed cover selections in towns 18 north and 3 west, and a large number of other towns.

73. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 137, being a letter from Commissioner Burdett to Commissioner of

the State Land Office Clapp, dated June 15, 1874, acknowledging the receipt of a list contained in a letter of Commissioner Clapp, of April 30, 1874 (Exhibit 136), and stating that as to certain townships the greater part of the selections were made and approved under the old survey, and as to those the old selections must govern. That as to certain other of the descriptions a portion had been located by land warrants, and others had been approved to the State for railroad and canal purposes, and others sold prior to the swamp grant of September 28, 1850, and that other tracts appear to be vacant and would be submitted to the Secretary of the Interior for his approval.

74. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection. Exhibit 138, being a letter of Clapp, commissioner of the State land office, to Commissioner Burdett, dated August 12, 1875, referring to the letter of Commissioner Burdett, dated June 15, 1874 (Exhibit 137), requesting that the lands noted in the Commissioner's letter as ap-

pearing vacant might be submitted for approval without further

delay, and inclosing a list of lands.

75. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 139, being a letter from Acting Commissioner Curtis to Commissioner of the State Land Office Clapp, dated September 13, 1875, acknowledging receipt of Commissioner Clapp's letter of August 12, 1875 (Exhibit 138), advising him that certain tracts were included in Ionia list No. 20, and that certain other of the tracts were submitted to the Secretary of the Interior for approval on the 10th inst.

76. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 140, being a copy of approved list No. 20, Ionia district, so far as relates to certain descriptions in town 18 north, 3 west.

77. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 141, being a patent from the United States to the State of Michigan, No. 34, for certain swamp lands in town 18 north, 3 west, the same lands

contained in Exhibit 140.

78. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 142, being a certificate of the commissioner of the State land office, dated June 16, 1892, from which it appears that certain lands in towns. 18 north, ranges 3 and 4 west, and other towns are not found in any approved list, nor included in any patent of the United States to the State of Michigan on file in the State land office; and further, that no swamp lands in township 18 north, range 3 west, are included in any approved list on file in that office, except Ionia No. 1. No. 10, and No. 20, or in any patent except patents No. 20 and No. 34, and reciting similar facts as to other lands not involved in the declaration in this case.

79. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 143, being a letter of the register and receiver of the United States land office at Detroit to the commissioner of the State land office, dated September 10, 1877, transmitting a copy of a letter from the Commissioner of the General Land Office to the register and receiver.

dated September 6, 1877, and advising the State that it has 60
511 days to appeal from the decision of the department contained
in this letter of the Commissioner referring to certain tracts of
land included in home-stead entries found in conflict with the claim of
the State. Says that the lands were embraced in supplemental list D,
and stating that the lands were in towns approved and patented,

based on the old survey, and that for that reason the claim of the State to the particular parcels had been rejected.

80. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 144, being a letter dated June 26, 1880, from Commissioner Williamson to the governor of Michigan, advising him of the receipt of a letter of the 17th inst. inclosing a list of lands in township 24 north,

range 1 west, claimed as belonging to the State under the swamp grant, and stating that the list referred to was superseded by lists made on the resurveys, and as these lists do not include the lands claimed by the State, they were not recognized as swamp selections, and that the land on the odd-numbered sections had all been certified to the State for railroad purposes.

81. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 145, being a letter dated July 27, 1881, from Governor Jerome to Secretary of the Interior Kirkwood, inclosing a list of lands which had been approved to the State, and requesting patents therefor.

82. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 146, being a letter from Commissioner McFarland to the governor of

Michigan, dated August 27, 1881, acknowledging receipt of the letter of Governor Jerome of July 27, 1881 (Exhibit 145), stating in reply that the records of the office showed that certain of

the descriptions had been selected and approved as swamp lands, but before patent had been issued resurveys had been made and a new list prepared, in which the parcels do not appear as swamp lands, and therefore they could not be treated as such. That another description had already been patented to the State, erroneously, as being land confirmed to purchasers under the United States, under the act of March 3, 1857, and that certain of the remaining tracts would be patented to the State at an early day.

83. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 147, being a letter from Governor Jerome to Commissioner of the General Land Office, dated March 20, 1882, inclosing a letter from the commissioner of the State land office, together with the list of lands for which a patent was requested, a letter of the commissioner of the State land office, dated March 18, 1882, asking the governor to re-

quest patents on the inclosed.

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84. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 148, being a letter from Commissioner McFarland to the governor of Michigan, dated March 29, 1882, acknowledging receipt of the governor's letter of the 20th inst. (Exhibit 147), stating that certain of the descriptions had been sold by the General Government prior to 1850; that others of the tracts are reported as swamp selections May 12, 1858, were November 12, 1867, selected for the Jackson, Lansing & Saginaw railroad for railroad purposes, and the State's

claim to the same lands under another grant would not be recognized; that another parcel does not appear on the plats of the Government survey; that other parcels have not been selected as swamp lands, and that the remaining parcels do not appear in the lists found on the resurveys in the respective townships, and for that reason the request of the governor cannot be complied with.

85. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 149, being a letter from Commissioner Sparks to the register and

receiver at Detroit, dated March 25, 1887, stating that certain descriptions upon which homestead entries had been made were suspended for conflict with apparent claim of the State of Michigan under the swamp grant, which descriptions were contained in supplemental list D, transmitted after the resurveys in those towns, but in which towns the greater portion of lands had been carried into patents based on the old survey prior to the reception of the supplemental list, and that therefore the selections in the supplemental list would not be recognized, the claim of the State based on the supplemental list would be held for rejection, and they are requested to notify the State authorities of the usual time for appeal.

86. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 150, being a letter from Commissioner Sparks to register and receiver at East Saginaw, dated November 8, 1887, stating that as to a certain description embraced in a cash entry at that office it appears to be claimed by the State of Michigan as swamp lands, which claim is

founded on a selection made December 24, 1852, subsequent to which time a resurvey was made and a new list prepared, which did not contain the description involved. The field-notes do not show the parcels to be swamp and overflowed within the meaning of the grant, not being approved or patented to the

State, claim of the State is held for rejection, and the register and receiver is requested to notify the governor of the State.

87. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 151, being a letter from Commissioner Wilson to the register and receiver at Ionia, dated January 30, 1868, and Exhibit 151 A, being a letter from Commissioner Wilson to the register and receiver at Ionia, dated July 30, 1869.

Exhibit 151 being the decision of the Commissioner rejecting the entries of Addison P. Brewer and others for lands in 18, 19, and 20 north, range 3 west, their entries being contested by the Flint & Pere Marquette and Jackson, Lansing & Saginaw Railroad Companies and Messrs. Remick and Merrill. These lands were selected by the State in 1852 as swamp lands, and in 1857 a resurvey was made of the townships and a new list prepared in 1858. The railroad companies claim the land under the act of Congress of June 3d, 1856. The lands in dispute were within the fifteen-mile limits of the several roads, and the indemnity sections were certified to the road in 1859, 1862, and 1864. Mr. Remick in 1854 and Mr. Merrill in 1863 had applied to enter the lands at the United States land office. The applications of Brewer and others were made at the United States land office in 1866. The Commissioner holds that at the time of the adjustment of the railroad grant and at the time of the application for entry of Messrs. Remick and Merrill the selections of the State in 1852 operated as a withdrawal of

the lands from public entry, and not subject to disposal under the terms of the railroad grant. The lands being resurveyed and a new list made, the selections of the State must be considered as having been relinquished, and the lands should now be

restored to market after public notice and the locations canceled. Parties were allowed thirty days in which to appeal to the Secre-

mry of the interior.

Exhibit 151 A advises the register and receiver of the affirmation of the decision of the Commissioner by the Secretary of the Interior, and directs them to return the scrip, cash, or warrants upon which the entries were made to the proper parties, note the cancellation of the entries on the book of the office, and to offer the lands at

public sale in the usual manner.

S8. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 152, being a letter from W. R. Wood, chief clerk of the surveyor general's office, dated May 13, 1858, stating the surveyor general left day before with maps, field-notes, etc., of the surveys in Michigan to be transferred to the State authorities, and that he had mailed to the Commissioner's address the original supplemental lists in the Cheboygan, Grand River and Saginaw land districts made up from the resurveys since the date of the supplemental lists for those districts, which latter lists had been transferred to Michigan authorities in May, 1857.

89. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 153, being from the State land office of Michigan, original supplemental

list E of swamp lands in Cheboygan district.

90. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 154, being from the State land office of Michigan, ap-

proved list No. 11 of swamp lands in the Ionia district.

91. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 155, being a letter from Governor Crapo to Commissioner Edmunds, dated June 20, 1866, acknowledging the receipt of a copy of approved list No. 11, and requesting that patents issue for the same.

92. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 156, being a copy of patent of the United States to the State of Michigan, No. 22, covering lands in towns 28 north, range 4 west, and 24 north, range 9 west, the same lands as are included in approved list No.

11 (Exhibit 154).

93. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 157, being a letter of James W. Sanborn, commissioner of the State land office, to Governor Wisner, dated April 5, 1859, inclosing to the governor a copy of the letter of Commissioner Hendricks to Treadwell, commissioner of the State land office, dated December 18, 1858, and lists of towns inclosed in the latter letter. Also other documents showing the difference in the acreage of swamp lands under the old and the resurveys. In certain towns showing a decrease by the resurvey of over 78,000 acres, and in the lands already patented to the State a difference of 235,000 acres. Other documents are included showing the difficulty in locating the lands described in the patents by

reason of the discrepencies in the two surveys, and submitting 517 the whole matter to the governor for his advice in the

94. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 159, being a letter from Samuel S. Lacey, commissioner of the State land office, to Commissioner Edmunds, dated July 10, 1861, inclosing statement B, as attached to the report contained in Exhibit 158, asking when the lands appearing to have been unpatented may be patented to the State of Michigan.

95. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 161, being a copy from the records at Washington of the surveyor general's list No. 1, Grand River district, so far as it covers towns. 18 north,

range- 3 and 4 west.

96. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 162, being a copy from the General Land Office of Ionia approved list No. 1, so

far as it covers towns, 18 north, ranges 3 and 4 west.

97. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 163, being a tax deed from the State of Michigan by the auditor general of the State of Michigan to C. A. Rust, dated July 30th, 1892, issued in pursuance of a sale of the lands in controversy, for the delinquent taxes for the year 1888, at a sale thereof made May 4th, 1891, for the sum of \$350.24.

98. The said circuit court of appeals erred in holding that there was no error committed by the trial court in rejecting and exclud-

ing on plaintiff's offer the records and files in the case of the United States vs. Henry Nicholson et al., in the United States circuit court for the eastern district of Michigan, being Exhibit 175 A. This was an action brought by the United States against Henry Nicholson and his bondsmen, based on the contract of Nicholson with Surveyor General Haines, dated the 20th day of July, 1838, for the survey according to the laws of the United States and the instructions of the surveyor general of towns 18,19 and 20 north, ranges 1, 2 and 3 west, and the bond given in pursuance of that contract, dated the 20th of July, 1838, alleging as breaches of the condition of the bond that Nicholson as deputy surveyor did not well and truly and faithfully, according to the laws of the United States and the instructions of the surveyor general, make and execute the surveys required under the terms of his contract, and did not return the field-notes of such a survey, and that he did not, with his chainmen and axemen and flagbearers, lay out and subdivide the towns in the sections as required to do by the contract. The plea was one of performance, and that if there had been a non-performance, full payment and satisfaction had been made by the defendants, and that the bond was released and discharged. On the trial of the case before a jury on the 25th day of November, 1850, there was a verdiet in favor of the defendants.

99. The said circuit court of appeals erred in holding that there was no error committed by the trial court in rejecting and excluding the records and files in the case of the *United States vs. Heavy Brevoort et al.*, in the United States circuit court for the eastern district of Michigan, being Exhibit 175 B. This action was in the same form as the action against Nicholson, set forth in the preceding assignment, his contract bearing date Decem-

ber 13, 1839, covering towns 24, 25, 26, and 27 north, ranges 1, 2, and 6 west, and towns 25, 26, and 27 north, ranges 3, 4, and 5 west, and towns 24, 25 and 26 north, range 7 west. Declaration alleges in substance a non-performance of the contract in accordance with the laws of the United States and the instructions of the surveyor general, and the plea is that the contract was fully performed. On a trial of the cause before a jury on the 23rd day of

November, 1850, there was a verdict for the defendants.

100. The said circuit court of appeals erred in holding that there was no error committed by the trial court in rejecting and excluding from evidence on the offer of plaintiff, Exhibit 176, being a letter dated December 13, 1850, from J. M. Howard to Secretary of the Interior Stewart, reciting the institution of suits in the United States court against Deputy Surveyors Nicholson, Brevoort, and others, at the suggestion of Lucius Lyon, the late surveyor

general.

Mr. Howard was the counsel employed in the cases for one of the defendants, Mr. Mullett, and gives the history of the trial of the case against Brevoort, and alleges that there was not the slightest proof that the returns of the surveys by Brevoort were fraudulent or fictitious, as had been reported, and states that the Government relied upon the testimony of Wm. A. Burt, the deputy surveyor, who had made an examination, under instructions of Surveyor General Lyon, of the surveys in controversy, in April, 1849, and the following months, and indicates that Mr. Burt received, as his compensation for these surveys, \$2,500 more than he was by law entitled to receive, and from his testimony it appeared that he found many of the old monuments of the old surveys, and that a large portion of the country examined had been run over by fire, which had consumed most of the timber, and the same facts were proved by other witnesses.

that there was no error committed by the trial court in rejecting and excluding from evidence on offer of plaintiff, Exhibit 177, being a letter from United States District Attorney Bates to Hon. James L. Conger, dated February 10, 1851, referring to the trial against Brevoort and Mullett; states that the cause was tried in the previous December and had been taken to the Supreme Court on bill of exceptions, but the evidence of the trial was conclusive that the surveys had been faithfully fulfilled, and that eventually the defendants would have a verdict.

102. The said circuit court of appeals erred in holding that there was no error committed by the trial court in rejecting and excluding from evidence on the offer of plaintiff, Exhibit 178, being a

letter from United States District Attorney Bates to Commissioner Butterfield, dated February 11, 1851, reciting in substance the facts stated in Exhibit 177, referred to in the preceding assignment.

103. The said circuit court of appeals erred in holding that there was no error committed by the trial court in rejecting and excluding from evidence on the offer of plaintiff, Exhibit 179, and the inclosures contained in it, being a letter from Chas. Noble, surveyor general, to Commissioner Butterfield, dated February 28th, 1851, inclosing two letters of Henry Brevoort, Jr., making charges against the late Surveyor General Lucius Lyon. The first letter is dated February 11, 1851, and charges that Lyon had been given contracts for districts too large for him to execute in person and had let them out to other persons, so that he could not run and mark

the lines, as he was required to do by the general instructions
governing surveying contracts; that he did not accompany
his surveying parties to the districts contracted, but remained
at Detroit and Lansing sufficient time, so that he had not given over
five or six weeks to the field-work covered by his contracts, and that
while the instructions required the surveys to be made by the use
of Burt's solar compass, Lyon had only one such instrument for the
entire party, and that he had failed to pay numbers of the men
who were in his employ. The second letter is dated February 14th,
1851, replying to a letter of the 7th inst. from Noble to Brevoort, re-

questing him to furnish the proof of his statement, in which Mr. Brevoort says he is ready to produce competent testimony in any court whenever called upon to do so.

104. The said circuit court of appeals erred in holding that there was no error committed by the trial court in rejecting and excluding from evidence over plaintiff's objection Exhibit 180, being a letter from Wilson, Commissioner, to Surveyor General Noble, dated January 15, 1853, stating that the order to determine what action should be had with reference to the surveyor general's office in view of the act of Congress of 1840, relative to the closing of the office, suggests that the chief clerk, Mr. Frost, be sent to Washington to personally give such information and receive such instructions as are desired.

105. The said circuit court of appeals erred in holding that there was no error committed by the trial court in rejecting and excluding from evidence Exhibit 181, being a letter from Surveyor General Noble to Commissioner Wilson, dated February 14, 1853, stating that he has prepared in the limited time allowed him a schedule of

the field-notes and office work yet to be completed in his office, and that the bearer, Mr. Frost, had been detailed to present the same, and that he would give such further information as he deemed important for the Commissioner's office. Attached to the letter is the schedule referred to, showing ten townships of resurveys not yet completed and seven townships in the Upper Peninsula unsurveyed and seven townships the surveys of which made in 1851 were suspended, and that a number of towns yet to be platted and the notes transcribed.

106. In holding that there was no error committed by the trial

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court in refusing to give plaintiff's request to charge No. 4, which

request is as follows:

The act of Congress made it the duty of the Secretary of the Interior to identify the lands granted, and when he tendered to the State of Michigan the election to receive the lands granted, according to the field-notes of the Government survey, as the basis of identification, in accordance with the instructions under date of November 21, 1850, which method of identification was accepted by the legislature of the State by an act passed and approved June 21, 1851, the method so tendered and accepted became a compact between the State of Michigan and the United States and was binding upon both parties.

107. In holding that there was no error committed by the trial court in refusing to give plaintiff's request to charge No. 5, which

request is as follows:

The Secretary of the Interior having approved the selections contained and designated by legal subdivisions in a list called the Ionia land district No. 1, over his hand, and bearing date the 27th day of October, A. D. 1853, and made a plat thereof, under and in accordance with said act of Congress, and forwarded said list

523 of legal subdivisions and plat to the governor of the State of

Michigan, and suggested that the governor request patents therefor from the United States, and the governor having requested patents to be issued therefor on the 31st day of January, 1854, and the legal subdivisions in issue in this suit being contained in and designated as swamp lands in said list and plat as swamp lands inuring to the State of Michigan under said act of Congress, the title to the legal subdivisions described in the plaintiff's declaration in issue in this suit became fully identified and fully vested in the State of Michigan.

108. In holding that there was no error committed by the trial court in refusing to give plaintiff's request to charge No. 6, which

request is as follows:

That after making said list and plat and forwarding them to the governor of the State of Michigan, the work of issuing the patents therefor, as requested by the governor, was merely ministerial, and the Secretary of the Interior could not deprive the State of Michigan of such lands by neglecting or refusing to issue patents therefor.

109. In holding that there was no error committed by the trial court in refusing to give plaintiff's request to charge No. 7, which

request is as follows:

The act of Congress approved March 3, 1857, confirmed to the State of Michigan all selections embraced in the approved list No. 1 of the Ionia land district, which were, at the date of said act, vacant and unappropriated and not interfered with by previous settlement under the laws of the United States, and the uncontra-

dicted evidence in this case showing that the lands de-524 scribed in the plaintiff's declaration were embraced in such selections and contained in the approved list and plat made by the Secretary of the Interior, and were, on the 3rd of March,

1857, vacant, unappropriated, and not interfered with by previous settlement under the laws of the United States, were by that act confirmed to the State of Michigan, such act of confirmation operating as a grant of lands embraced in such approved list and plat.

110. In holding that there was no error committed by the trial court in refusing to give plaintiff's request to charge No. 8, which

request is as follows:

If such approved list made and approved by the Secretary of the Interior was, on the 3rd of March, 1857, withheld from patent because of the resurveys having been ordered or made, and if he had any corrective or other authority over such list to alter and act upon it, then the act of March 3, 1857, applied to such list and confirmed the lands designated therein to the State of Michigan, and deprived the Secretary of the Interior of all power in the premises save to cause patents to such lands to be issued to the State of Michigan.

111. In holding that there was no error committed by the trial court in refusing to give plaintiff's request to charge No. 9, which

request is as follows

The testimony in the case fails to show that there had been any such adjustment of the swamp-land grant between the State of Michigan and the United States as in law deprives the State of the title of the land granted to it under the act of Congress of September 28, 1850, and claimed in this suit.

112. In holding that there was no error committed by the trial court in refusing to give plaintiff's request to charge

No. 10, which request is as follows:

The testimony in this case fails to show that there has been any estoppel as against the State to forbid its grantee and those claiming title from the State to rely upon the act of Congress granting the lands involved in the issue in this case to the State.

113. In holding that there was no error committed by the trial court in refusing to give plaintiff's request to charge No. 11, which

request is as follows:

Upon the whole record and the testimony given you in the open court your verdict should be for the plaintiff.

1 4. In holding that no error was committed by the district judge

in parging the jury as follows:

"I will say to counsel that, as it lies in my mind, there is no substantial distinction between this case and the first except that the lands in question are found in an approved list, which was subsequently revoked and canceled by the Secretary of the Interior, and the question that arises upon the power of the Secretary to order the resurvey or revoke any certification of lands made by him before the actual issue of patents. If he had such power, then, of course, the title of the defendants must prevail in this action, and I have no doubt the Secretary had the power not only to order the resurvey as I have held before."

115. In holding that no error was committed by the district judge

in charging the jury as follows:

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"But at any time before the issue of patents, if he discovered that there was fraud or mistake, or if he was satisfied upon the evidence before him that the lands were not of the character granted

by the act of September 28, 1850, it was his duty, notwith-standing he had certified them to the State by approval of the list, to revoke that certification, cancel it, and the lands remain unaffected; and, of course, if the patents had been issued, it was quite probable that this action would have been conclusive on the rights of the parties, that patent not having been issued, and the Secretary having decided, as it was his province to decide on the facts before him, that the lands were not of the character granted, I think the title of the defendants must prevail."

116. In holding that no error was committed by the district

judge in charging the jury as follows:

"With reference to the act of 1857, my impression is very strong. Both from the reading of the act and from what I have seen in the decisions of the Department of the Interior, where the question has arisen once or twice that the act was primarily intended for those selections of land made by the States themselves pursuant to the surveys which they had made, and had no application, at least it wasn't originally intended for and does not apply to those lands designated as swamp lands, under the surveys of the United States, and it certainly has no application to those lands the lists of which were set aside and canceled, and of which a resurvey was ordered by the Secretary of the Interior, and the act of 1857 could not, in my judgment, even if it intended to apply to all the States alike, it could not revive selections which had been so far canceled by the Secretary of the Interior in the line of his duty as to order a resurvey of those lands."

117. In holding that no error was committed by the district judge in directing a verdict for the defendant as requested by de-

527 fendant's counsel.

118. The circuit court of appeals erred in holding that the act of Congress of March 3, 1857, did not apply to the list known as approved list No. 1, Ionia, and did not confirm the selections contained in said list to the State of Michigan. (Opinion, p.

17.)

119. The circuit court of appeals erred in holding that the Secretary of the Interior had no authority to enter into the arrangement with the State of Michigan to adopt the field-notes of the United States survey on file in the surveyor general's office, if by so doing lands the greater part of any Government description thereof which were not swamp would be included in such selections. (Opinion, p. 13.)

120. The circuit court of appeals erred in holding that the Secretary of the Interior could not assume any obligation by agreement with the State which would bind him in the discharge of his duty

to the General Government. (Opinion, p. 13.)

121. The circuit court of appeals erred in holding that by the act in question the proceedings of his department extended from the first step to be taken for the identification of the lands to the issu-

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ance of the patent to the State, whereupon they became subject to the disposal of the legislature thereof, and that when the patent was required by the act it would seem that Congress intended the Secretary's supervision to continue until all things contemplated by the act had been accomplished by its issuance. (Opinion, p. 13.)

122. The circuit court of appeals erred in holding "that it was not the intention of this act" (the act of March 3, 1857) "to overcide the general power of the Secretary of the Interior to correct frauds and mistakes in the preparation of the lists thereby confirmed, and that upon the just construction of the act such frauds and mistakes remain subject to correction." (Opinion,

p. 17.)

123. The circuit court of appeals erred in holding that the act of March 3, 1857, was not intended to include a list which was in the situation of the one under which the plaintiff claims. (Opinion,

p. 17.)

124. The circuit court of appeals erred in holding that it was not intended by the Secretary of the Interior nor expected by the State that the selection of swamp lands certified and transmitted to the governor on the 13th day of January, 1854, and which included the lands claimed by the plaintiff, should be necessarily final, but that it was intended to be subject to correction to the extent that the facts shown by the resurveys should require, and that upon its being proven by the resurveys that these lands were not swamp, it was competent to supersede the selection by a correct one. (Opinion, p. 12.)

125. The circuit court of appeals erred in holding that in this case the selections had been made and approved under a mistake of facts induced by false and fraudulent surveys, whereby lands had been certified which were not swamp and to which the State had no right whatever, and the rights of no third party bad intervened, it was competent for the Secretary on discovering the error at any time before issuing the patent to correct the wrong by recalling his certification: "not upon mere error of judgment, but that character of mistake which affords a ground of relief in a court of

equity."

529 (Opinion, pp. 12 & 13.)

126. The circuit court of appeals erred in holding, "the Secretary under this grant would exercise his powers consistently with his general authority over the public lands. He had plenary and exclusive power to direct the surveys, to cancel such as he found erroneous, and to order resurveys as the necessities of every occasion

should require." (Opinion, p. 13.)

127. The circuit court of appeals erred in holding that the Secretary of the Interior " had the power and was charged with the duty of supervising the method by which granted lands should be passed to the beneficiary. If mistakes were committed by his subordinates, the results of which, if suffered to stand, would be to accomplish a wrong, he had power to correct them. If they were made by himself his duty was as plain and hiw power no less ample." (Opinion,

p. 13.)

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128. The said circuit court of appeals was in error in holding that the grant under the act of September 28, 1850, had been adjusted between the State of Michigan and the United States, and that the State had received substantially all the lands to which it

was entitled. (Opinion, pp. 9-12.)

129. The circuit court of appeals erred in holding that, " in effect, the plaintiff's contention amounts to this: that no matter how gross the error or from what cause proceeding, the Secretary of the Interior, when once he had certified a list of lands as falling due to the State under the grant, was without power to rectify it though no patent had been issued and the rights of no third party had become involved by purchase from the State, and further that

the Secretary had no power to do this with the consent of

the State." (Opinion, p. 10.)

130. The circuit court of appeals erred in stating (after setting out the letter of the Commissioner of the General Land Office of date January 13, 1854, to the governor of Michigan), "In the margin of the descriptions contained in town. 18 north, of range 3 west, was written the letter 'F,' which was explained in the accompanying certificate to mean that the survey of that township had been reported as fraudulent." (Opinion, p. 5.)

No such letter "F" was entered in the margin or any other place

upon the approved list No. 1 transmitted to the governor.

131. There is also error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid was given for the said defendant, Charles A. Rust, survivor, etc., and against the said Michigan Land and Lumber Company, Limited, whereas by the law of the land the said judgment ought to have been given for the said Michigan Land and Lumber Company, Limited, and against said Charles A. Rust, survivor, etc.

And the said Michigan Land and Lumber Company, Limited, prays that the judgment aforesaid for the errors aforesaid and other errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that it may be restored to all things that it has lost by occasion of said judgment, etc.

JOHN W. CHAMPLIN AND FRANK E. ROBSON,

Attorneys for Plaintiff in Error.

And afterwards, to wit, on the 24th day of August, 1895, 531 the following petition for writ of error was filed, which reads and is in the words and figures following, to wit:

UNITED STATES OF AMERICA, 88: 532

The Michigan Land & Lumber Company, Limited, conceiving itself aggrieved by the judgment rendered on the seventh day of May, 1895, by the United States circuit court of appeals for the sixth circuit in a cause therein pending, wherein The Michigan Land & Lumber Company, Limited, was plaintiff and Charles A. Rust, survivor in an action of ejectment against Amasa Rust and Charles A. Rust, was defendant, and said cause not being a case made final by section six of an act of Congress entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," and the matter in controversy exceeding one thousand dollars, besides costs, and having filed with the clerk of the said court assignments of error, doth hereby pray that a writ of error to the said United States circuit court of appeals for the sixth circuit may be allowed, and that a transcript of the record and proceedings and papers upon which said judgment was rendered, duly authenticated, may be sent to the Supreme Court of the United States, at Washington.

Dated the third day of August, 1895.

JOHN W. CHAMPLIN AND FRANK E. ROBSON, Attorneys for Plaintiff and Appellant.

Ordered that a writ of error, as above prayed for, be, and the same is hereby, allowed.

GEORGE SHIRAS,

Associate Justice of the Supreme Court of the United States.

Dated August 3d, 1895.

533 [Endorsed:] 178. United States circuit court of appeals for the sixth circuit. Michigan Land and Lumber Company, L't'd, plaintiff & appellant, vs. Charles A. Rust, survivor, &c., defendant. Petition for writ of error. Filed Aug. 24, 1895. Frank O. Loveland, clerk. J. W. Champlin, Frank E. Robson, attorneys for plaintiff and appellant.

And afterwards, on the same day, the following bond was filed in said court, which reads and is in the words and figures following, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

MICHIGAN LAND & LUMBER Co. et al.)
vs.
Charles A. Rust, Survivor, etc.

Know all men by these presents that we, the Michigan Land and Lumber Company, Limited, of Lansing, Michigan, as principal, and Samuel L. Smith, of Detroit, Michigan, and Edward W. Sparrow, of Lansing, Michigan, as sureties, are held and firmly bound unto Charles A. Rust, of Saginaw, Michigan, in the full and just sum of one thousand dollars (\$1,000.00), to be paid to the said Charles A. Rust, his certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our

heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of June, in the year

of our Lord one thousand eight hundred and ninety-five.

Whereas lately, at a session of the United States circuit court of appeals for the sixth circuit, in a suit depending in said court between said Michigan Land and Lumber Company, Limited, as plaintiff in error, and said Charles A. Rust, survivor, etc., as defendant in error, said cause coming into said court on a writ of error sued out by said plaintiff in error to the circuit court of the United States for the sixth circuit and eastern district of Michigan, a judgment was rendered against the said Michigan Land and

Lumber Company, Limited, and in favor of Charles A. Rust, survivor, etc., affirming the judgment in the said circuit

535 survivor, etc., affirming the judgment in the said circuit court for the eastern district of Michigan, and the said Michigan Land and Lumber Company, Limited, being about to prosecute a writ of error to said United States circuit court of appeals to reverse the judgment of said court in the aforesaid suit and to cause a citation directed to the said Charles A. Rust, survivor, etc., to the United States Supreme Court, to be holden at the city of Washington, in accordance with the rules and practice in that behalf:

Now, the condition of the above obligation is such that if the said Michigan Land and Lumber Company, Limited, shall prosecute said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

MICHIGAN LAND & LUMBER CO., LIMITED.

By E. W. SPARROW, Secretary.
SAMUEL L. SMITH.
EDWARD W. SPARROW.
[SEAL]

Sealed and delivered in the presence of-

FRANK E. ROBSON, GEORGE H. CARLISLE.

As to Samuel L. Smith.

F. E. CHURCH, E. A. CHAFIN,

> As to Michigan Land & Lumber Co. and Edw. W. Sparrow.

Approved by—

GEORGE SHIRAS, JR.,

Justice of the Supreme Court of the United States.

State of Michigan, County of Wayne. Eastern Dist. of Michigan, 88:

Samuel L. Smith, being duly sworn, says that he is a resident of said county and district and is the same person who signed the within obligation as surety; that he is worth the same specified in

the foregoing bond over and above all his debts and liabilities and exclusive of property exempt by law from execution.

SAMUEL L. SMITH.

Sworn to and subscribed before me this 28th day of June, A. D. 1895.

GEORGE H. CARLISLE, Notary Public, Wayne County, Michigan.

536 STATE OF MICHIGAN, County of Ingham, Eastern District of Michigan, \(\right\) 88:

Edward W. Sparrow, being duly sworn, says that he is a resident of said county and district and is the same person who signed the within obligation as surety; that he is worth the sum specified in the foregoing bond over and above all his debts and liabilities and exclusive of property exempt by law from execution.

EDWARD W. SPARROW.

Sworn to and subscribed before me this 1st day of July, A. D. 1895.

F. E. CHURCH. Notary Public, Ingham County, Michigan.

537 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing is a true and correct copy of the record in the case of The Michigan Land & Lumber Company vs. Charles A. Rust, survivor, etc., No. 178, October term, 1893, as the same remains upon the files and records of said United States circuit court of appeals for the sixth circuit, and of the whole thereof.

In testimony whereof I hereunto subscribe my name and affix Seal United States Circuit Court of Appeals, Sixth Circuit.

the seal of said United States circuit court of appeals for the sixth circuit, at the city of Cincinnati, Ohio, this 26th day of August, 1895.

FRANK O. LOVELAND, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

STATE OF MICHIGAN, County of Saginaw, \ \} 88: 538

Frank M. Totten, of Saginaw, in said county, being duly sworn, deposes and says that at said Saginaw, on the 20th day of August, A. D. 1895, he served a true copy of the citation hereto annexed upon Hanchett, Stark and Hanchett, attorneys for Charles A. Rust, named in said citation, by then and there delivering said copy to Leslie B. Hanchett, one of said firm of Hanchett, Stark and Hanchett. Further deponent says not.

FRANK M. TOTTEN.

Subscribed and sworn to before me this 20th day of August, A. D. 1895.

Seal of Herman A. Wolpert, Notary Public, Saginaw County, Mich.

H. A. WOLPERT,

Notary Public in and for Saginaw County, Michigan.

539 STATE OF MICHIGAN, County of Saginaw, \$88:

Frank M. Totten, of Saginaw, in said county, being first duly sworn, deposes and says that at said Saginaw, on the 20th day of August, A. D. 1895, he served a true copy of the writ of error issued from the Supreme Court of the United States in the cause wherein The Michigan Land & Lumber Company, Limited, is plaintiff in error and Charles A. Rust defendant in error upon Messrs. Hanchett, Stark & Hanchett, attorneys for said defendant in error, by then and there delivering said copy to Leslie B. Hanchett, one of the said firm of Hanchett, Stark & Hanchett.

Further deponent says not.

FRANK M. TOTTEN.

Subscribed and sworn to before me this 22nd day of August, A. D. 1895.

Seal of Herman A. Wolpert, Notary Public, Saginaw County, Mich.

H. A. WOLPERT,

Notary Public in and for Saginaw County.

540 UNITED STATES OF AMERICA:

To Charles A. Rust, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the United States circuit court of appeals for the sixth circuit, wherein The Michigan Land & Lumber Company, Limited, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United States, this thirteenth day of August, in the year of our Lord one thousand eight hundred and ninety-five.

GEORGE SHIRAS, JR.,

Associate Justice of the Supreme Court of the United States.

541 [Endorsed:] 178. United States circuit court of appeals for the sixth circuit. Michigan Land and Lumber Company, L't'd, plaintiff & appellant, vs. Charles A. Rust, survivor, &c., defendant. Monition. Filed Aug. 24, 1895. Frank O. Loveland, clerk. J. W. Champlin, Frank E. Robson, attorneys for plaintiff and appellant.

542 United States of America, 88:

The President of the United States to the honorable the judges of the United States circuit court of appeals for the sixth circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said United States circuit court of appeals, before you or some of you, between The Michigan Land and Lumber Company, Limited, plaintiff in error, and Charles A. Rust, survivor, &c., defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal of the Supreme Court of the United States. Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 13th day of August, in the year of our Lord one thousand eight hundred and ninety-five.

JAMES H. McKENNEY, Clerk of the Supreme Court of the United States.

Allowed by-

Associate Justice of the Supreme Court of the United States.

Endorsed on cover: Case No. 16,010. U. S. circuit court of appeals, sixth circuit. Term No., 331. The Michigan Land and Lumber Company, Limited, plaintiff in error, vs. Charles A. Rust, survivor, &c. Filed August 28, 1895.

CONCLUSION.

We submit that to decide for the plaintiff in this case would establish a novel doctrine, unsupported by precedent or by sound public policy, and dangerous in enlarging to an incalculable degree the liability of employers. The judgment of the court below should be affirmed.

ENOCH TOTTEN, WM. HENRY DENNIS, Attorneys for Defendant in Error. ch: 384. 5 SUPRÉME COURT

UNITED STATES. Filed Mar. 26, 18 9 monte Court, U.

OOTOBER TERM, 180

MAR 26 1897

MICHIGAN LAND AND LUMBHRAME H. MCKENNEY, COMPANY, LIMITED,

Plaintiff in Error,

No. 331.

CLERI

CHARLES A. RUST, SURVIVOR, ETC.,

VS.

Defendant in Error.

In Error to the United States Circuit Court of Appeals for the Sixth Circuit.

BRIEF FOR PLAINTIFF IN ERROR.

J. W. CHAMPLIN, FRANK E. ROBSON.

Attorneys for Plaintiff in Error.

LANSING, MICH. THOMPSON & VANBUREN, PRINTERS,



Supreme Court of the United States.

October Term, 1896.

THE MICHIGAN LAND AND LUMBER COMPANY,
(Limited,)

Plaintiff in Error,
vs.

Chas. A. Rust, Survivor, &c.,
Defendant in Error.

In Error to the United States Circuit Court of Appeals for the Sixth Circuit.

BRIEF FOR THE PLAINTIFF IN ERROR.

STATEMENT OF FACTS.

The action is ejectment involving title to the following lands, in the county of Clare, State of Michigan, namely:

5.	E.	1/4	of the	S.	E.	1/4.	Sec.	20.	Town 18	V	Range 3 W	
N	. W.	1/4	44	S.	W.	1/4	4.	21.		46	range 3 W	•
N	. W.	1/4	66	S.	E.	1/4	44	22.	*			
N.	W.	1/4	66	N.	W.	1/4	44	28.	4.	6.		
N.		1/2	+4	N.	E.	1/4	4.6	35.				
-								00.			• • • • • • • • • • • • • • • • • • • •	

Other descriptions were contained in the declaration, but were stricken out on the trial.

The plaintiff in error claimed title to the lands in fee simple, and during the trial was allowed to amend so as to claim an undivided half in fee.

The defendants pleaded the general issue.

The case was tried before Hon. Henry H. Swan, district judge, with a jury, resulting in a verdict in favor of the defendants under the instructions of the court. After verdict, and before judgment, defendant Amasa Rust died, and the case was revived against the surviving defendant, Charles A. Rust; judgment was subsequently entered on the verdict in favor of the surviving defendant, and the plaintiffs in error brought the case on error to the United States Circuit Court of Appeals for the Sixth Circuit, were the judgment of the circuit court was affirmed, and now bring the case to this court on error.

The plaintiff in error claims title under the "swamp land grant," so called, being an act of Congress approved September 28, 1850, and entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands' within their limits."

9 Statutes at Large, p. 519.

Under the provisions of this act the Secretary of the Interior, acting through the Commissioner of the General Land Office, submitted to the State of Michigan for its choice, two methods by which the lands inuring to the State should be determined.

Whether the State would adopt the field notes of the surveys, filed in the Surveyor-General's office as the basis of the list of lands granted to the State, or whether the State would conclude to have surveys made for the purpose of determining the boundaries of the swamp and overflowed lands. This option to the State was in pursuance of a plan adopted by the General Land Office to charge the Surveyor-General wherever the office still existed, with the making out of the lists in the first place, and where the office had been abolished to devolve that duty on the land offices of the respective districts. Considerable correspondence was had between the General Land Office, the Surveyor-General and the State authorities as to which method should be adopted.

Report C. G. L. O. for 1850, Exhibits 2, 3, 3A, 4-6, Record, pp. 16-21.

The Governor of Michigan submitted the maîter of selection to the Legislature of Michigan of 1851 (Exhibit 7, p. 21), and the Legislature by an act entitled "An Act to provide for the sale and reclaiming of the Swamp Lands granted to the State, and in the disposition of the proceeds," approved June 28, 1851, elected to "adopt the notes of the surveys on file in the Surveyor-General's office as the basis upon which they are to receive the swamp land granted to the State by the act of Congress of September 28, 1850."

See Appendix No. 1.

This arrangement has been recognized by the Secretary of the Interior in his adjudications from that time to the present, both under the original grant and the subsequent acts of Congress of March 2d. 1855. March 3d. 1857. and March 12th, 1860.

Noble, S. G., to Butterfield, C. G. L. O., June 18, 1851, Exhibit 10, p. 23.

Wilson, C. G. L. O., to Goodrich, April 25, 1855, Exhibit 19, p. 28.

Hendricks, C. G. L. O., to Goodrich, December 13, 1855, Exhibit 20, p. 28.

Hendricks, C. G. L. O., to Governor Bingham, December 13, 1855, Exhibit 21, p. 29.

Wilson, C. G. L. O., to Governor of Michigan, May 21, 1860, Exhibit 22, p. 30.

Hendricks, C. G. L. O., to Treadwell, C. S. L. O., December 22, 1858, Exhibit 23, p. 31.

Drummond, C. G. L. O., to Edmonds, C. S. L. O., December 27, 1871, Exhibit 24, p. 34.

Williamson, C. G. L. O., to R. & R., Detroit, September 6, 1877, Exhibit 25, p. 34.

Following this election by the Legislature, and in pursuance of the instructions of the Commissioner of the General Land Office, of November 21, 1850, (Exhibit 3A, p. 17), and

of December 12, 1850, (Exhibit 9, p. 22), the Surveyor-General prepared lists of lands inuring to the State, and among other lists that known as Grand River No. 1, which contained the lands in controversy in this suit, and bears date March 29, 1852. This list was transmitted by the Surveyor-General to the Commissioner of the General Land Office, under date of March 31, 1852, (Exhibit 11, p. 24), and was received at the General Land Office April 13, 1852, (Exhibit 12, p. 25.

Subsequent to the filing of this list with the Commissioner of the General Land Office, the Secretary of the Interior in compliance with the second section of the act of September 28, 1850 approved to the State the land in controversy in this suit in Approved List Ionia No. 1, under date of October 27, 1853, (Exhibit 27, p. 37), and January 13, 1854, transmitted to the Governor of Michigan a certified copy of the said list (Exhibit 15, p. 26), and March 13, 1854. (Exhibit 16, p. 26), transmitted to the Governor of Michigan the plat showing the lands approved to the State under the act of September 28, 1850, in the district of lands subject to sale at Ionia, a portion of which map containing the lands in controversy in this case is found opposite page 47 of the Record.

The Governor of Michigan acknowledged receipt of the certified lists January 31, 18,4, and at the same time requested the issue of patents thereon to the State of Michigan (Exhibit 112, p. 157, Exhibit 27, p. 37). No patent has ever been issued to the State of Michigan for the lands in controversy in this suit.

The field notes referred to in the act of the State Legislature (Appendix No. 1), and the plats referred to by the Surveyor-General in his letter to the Commissioner of the General Land Office, June 18, 1851 (Exhibit 10, p. 23), and in the correspondence as to the use of the field notes and plats as a basis of the selection above cited, were the original documents, and were transferred to the State of Michigan,

under act of Congress, June 12, 1840 (5 Statutes at Large, 384), and March 3, 1845 (5 Statutes at Large, 758), May 15, 1858, and February 6, 1860.

Record, p. 27, Exhibit 17, p. 27.

The field notes covering the lands in controversy in this suit are set out in full as Exhibit 30, commencing at page 40, and the plat from which the lists above referred to were made up is found as Exhibit 31, opposite page 46. From these it appears that the lands in controversy are correctly designated as lands inuring to the State of Michigan under the swamp land grant in pursuance of the instructions of the Commissioner of the General Land Office of November 21, 1850 (Exhibit 3A, p 17).

The plaintiff also showed by the records from the United States Land Office that the lands were vacant and unappropriated and not interfered with by actual settlements under the laws of the United States on the 3d day of March, 1857.

Testimony of Oscar Palmer, Record, p. 48.

The lands were conveyed by the State of Michigan to Edward W. Sparrow, in payment for certain work of improvement required by Act 130 of the Session Laws of 1883 of the State of Michigan, by two patents bearing date April 14, 1887 (Exhibit 33, p. 53, and Exhibit 34, p. 54), and were subsequently conveyed by Mr. Sparrow to the plaintiff in error by a deed dated October 31, 1887 (Exhibit 35, p. 55.)

Plaintiff also showed by its witness George W. Doxie that the lands in controversy were worth two thousand dollars (\$2,000) and upwards (p. 57 of the Record).

DEFENDANT'S TITLE.

The defendant claims title through several patents of the United States to William A. Rust, dated May 10, 1870, purporting to be issued in pursuance of purchases made by Mr. Rust at the Ionia Land Office in Michigan (Exhibit 38, p. 60:

Exhibit 39. p. 60; Exhibit 40, p. 61), and under a patent of the United States to Addison P. Brewer, dated January 10, 1867, purporting to be issued in pursuance of a purchase made by Mr. Brewer at the Ionia Land Office (Exhibit 51, p. 63). Several mesne conveyances—given in exhibits—by which title was traced from Mr. Rust and Mr. Brewer to the defendants to an undivided one-half of the land in controversy. These are referred to on page 64 of the Record.

Defendants in support of their title offered a large mass of correspondence between the General Land Office and the Surveyor-General, and the Michigan officials and others: commencing as early as 1842, and carried on until sometime after 1880, which is summarized below.

February 1, 1842, the Legislature of Michigan, by joint resolution (Exhibit 57, p. 64) requested the President of the United States to cause a survey to be made of certain townships which were represented to have been imperfectly surveyed. The particular townships involved were mentioned, there being eighty-one whole and fractional townships, lying for the most part east of the principal meridian, and north of Town 18 north, and did not include the township in controversy in this case.

A copy was forwarded to the President of the United States, February 3, 1842, and by him referred to the Commissioner of the General Land Office, who in turn referred the matter to Surveyor-General Haines, who reported March 4, 1842, that he personally was not aware of any such imperfections as had been referred to in the resolution, but explained how the matter might have occurred, and suggested that the districts be examined by some reputable deputy surveyor (Exhibit 60, p. 68). William A. Burt, a deputy surveyor, was instructed, April 11, 1842, to examine certain of the towns for the purpose of ascertaining the character of the imperfections alleged (Exhibit 62, p. 75). In August of that year Burt seems to have made a report, and resurveys of the

towns alleged to be imperfectly surveyed were ordered. Resurveys continued on these towns until 1848 or 1849. In a report made in 1849 by Burt it is set forth that there were some imperfections in the survey of the town involved in this controversy. This report is part of Exhibit 74, p. 89. Correspondence was had during this period between the General Land Office and Surveyor-General and others inquiring as to the progress of the work of resurvey, the greater part of which is referred to and summarized in a report of Moses Kelley of February 14, 1851, entitled "Resurveys in the State of Michigan" (Exhibit 75, p. 96).

To the introduction of all this proof relating to the resurveys, prior to 1850, objection was made on the part of the plaintiff, that the matter was immaterial and irrelevant.

Subsequent to 1850, and from that time until the latter part of 1857, resurveys were still carried on. The Surveyors-Generals recommendations are set forth in the reports of the Commissioners of the General Land Office and Surveyors-General for the years 1850 to 1858 inclusive (Exhibit 76, p. 100; Exhibit 78, p. 105; Exhibit 81, p. 113). The progress of this work is set out in various letters which passed between the Surveyor-General and the General Land Office during this period. To the introduction of this testimony objection was made by the plaintiff that it was immaterial and irrelevant to the issue.

New field notes of these resurveys were prepared in the usual form, and from the field notes new plats delineating the surveys were also prepared. These field notes and plats of the new surveys were turned over to the authorities of the State of Michigan, and are mentioned in the inventories above referred to. The field notes for Town 18 North and 3 West, which contain the lands in controversy in this suit, are sworn to December 26, 1856, and are set out as Exhibit 114, p. 150. The plat is certified under date of February 12, 1857, and is found opposite p. 174, being Exhibit 123 of the record.

Mr. Palmer's testimony shows that the Register's plat was received at the United States Land Office June 3, 1858, and is dated May 12, 1858, (Record. p. 50), and a copy of the plat was sent to the Commissioner February 12, 1857 (Record. p. 124-125.)

Under date of October 4, 1852 (Exhibit 91, p. 133), the Surveyors-General was instructed to prepare new swamp land lists, "in explanation of the former ones," and "to designate them as having been made out in lieu of the former ones."

Lists were prepared from time to time subsequent to this date and forwarded to the Land Office (Exhibit 93, p. 134; Exhibit 95, p. 135), and the list covering Town 18 North Range 3 West, is known as Grand River Supplemental List No. 3, certified to by the Surveyor-General May 13, 1858. and was enclosed to the Commissioner of the General Land Office under date of May 12, 1858 (Exhibit 124, p. 175; Exhibit 125 p. 177). Subsequently the greater portion of the lands contained in Grand River Supplemental No. 3. were approved by the Secretary of the Interior, and certified in lists known as Ionia No. 10. under date of May 18, 1866 (Exhibit 127, p. 178), and Ionia No. 20, certified September 13, 1875 (Exhibit 140, p. 198). Copies of these approved lists were in due time sent to the Governor of the State of Michigan, and patents were issued for the lands contained in these two approved lists June 21, 1866, and July 31, 1876.

To the introduction of this documentary proof, and the correspondence connected with it, the plaintiff objected that it was immaterial and irrelevant.

Defendants, in further support of their title, introduced in evidence a number of letters from the Commissioner of the General Land Office to the Governor of Michigan, requesting certain erasures, interlineations and additions, and other changes, to be made in various approved lists of swamp lands which had been theretofore forwarded to the Governor by the General Land Office, and the answer of the Governor to

their requests stating that the modifications requested had been made upon the copies which had been forwarded to the State. And further introduced in evidence the lists showing such erasures and other modifications with notations referring to the correspondence under which this had been done. The first of these letters seems to have been January 20, 1854, and such requests were forwarded from time to time from that date to July 1, 1854, (These exhibits are from 98 to 109 inclusive, pages 136 to 148 inclusive, and Exhibit 119, p. 171). To the introduction of these matters plaintiff objected on the ground that they were immaterial and irrelevant to the issue.

Defendants, in further support of their title, sought to show that wherever resurveys had been made, the lists founded upon the old surveys were set aside, and thereafter the General Land Office recognized only the lists founded upon the surveys, and introduced considerable correspondence between the General Land Office and the Surveyors-General and the Registers and Receivers of the United States Land Office, and between the General Land Office and the State Land Office. The exhibits referring to this phase of the controversy are scattered through the Record, and we shall not undertake to collect them here.

To the introduction of these exhibits the plaintiff objected that they were immaterial and irrelevant to the issue.

Defendants also urged that in 1861 the Legislature of Michigan passed an act authorizing the Commissioner of the General Land Office to select any existing deficiency that there might be due the State from the United States, under the act of Congress of May 20, 1826, and any subsequent act of Congress whereby lands were granted to the State of Michigan.

Act 123, Session Laws of Michigan, 1861, p. 167. See Appendix No. 2.

The several Commissioners of the State Land Office, from

time to time, made requests of the General Land Office for the approval and certification of the lands listed by the Surveyors-General, and a considerable quantity of lands was obtained by certification and approval to the State, and subsequently patents issued thereon. The various commissioners reported, from time to time, their proceedings looking to the adjustment of the swamp land grant and other grants made to the State of Michigan by Congress, in their official and published reports. These reports and considerable of the correspondence between the State Land Office and the General Land Office were introduced in evidence on the part of the defendant, against plaintiff's objection.

Defendants to further sustain their title, introduced in evidence a tax deed from the State of Michigan to defendant Charles A. Rust, dated July 30, 1892, for the delinquent taxes of the year 1888, the deed covering the land in controversy in this suit. To the introduction of this deed objection was made on the part of the plaintiff, that it was irrelevant to the issue and incompetent, and not admissible under the plea of the defendants.

PLAINTIFF'S REBUTTAL.

The plaintiff read from the several reports of the Commissioner of the General Land Office from 1855 to 1891, including a series of schedules giving the amount of the land selected by the State of Michigan as swamp land, the amount approved to the State, and the amount patented, contending that it appeared that lands had been approved and patented to the State in nearly every year of that period, with some slight increase of selection after 1880, and that similar statements were made in the other reports of the Commissioner of the General Land Office (Exhibit 165, p. 244, and 166, p. 245), and that the reports of the Commissioner of the State Land Office were to the same effect (Exhibit 167, p. 246).

Plaintiff also introduced a series of letters between the

Commissioner of the General Land Office and the several Surveyors-General in 1856 and 1857, which it was claimed exhibited some reasons for the closing of the resurveys for Michigan, although all the work contemplated by the reports of the Surveyor-General had not been completed (Exhibits 169 to 175 inclusive, pp. 251 to 258 inclusive).

Plaintiff also offered in evidence the records and files in the cases of the United States vs. Henry Nicholson et al. and the United States vs. Henry Brevoort et al., suits brought in the Eastern District of Michigan by the United States on the bonds given by the defendants as deputy surveyors, and whose surveys were reported defective by Mr. Burt, as set forth in the report of the Surveyor-General for the year 1849 (Table N, p. 94.) The suits were tried before a jury, resulting in a verdict for the defendants, and in this connection such reports of the details of these cases as are set forth in the letter of J. M. Howard to the Secretary of the Interior, December 13, 1850 (Exhibit 176, p. 270.) and two letters of the United States District Attorney of February 10, 1851 and February 11, 1851, the latter addressed to the Commissioner of the General Land Office (Exhibit 177-178, p. 272) were offered. These letters stated in substance that the proof was conclusive that the surveys had actually been carried out in complete compliance with the instructions of the Surveyor-General, and that it was the opinion of Mr. Bates that in the event of a new trial the verdict would eventually be for the defendants.

To the introduction of these letters objection was had by the defendants that they were irrelevant and immaterial. and the objection was sustained.

Plaintiff also offered certain letters, in addition to those admitted in evidence, between the Commissioner of the General Land Office and the Surveyor-General, including letters of a former deputy, which it was contended, tended to show that the resurvey as being prosecuted was largely fraudulent;

to the introduction of which defendants objected that they were immaterial and irrelevant, which objection was sustained (Exhibit 179, p 274.) Plaintiff also introduced letters between the Commissioner of the General Land Office and the Surveyor-General, and a report of the chief clerk of the latter, tending to show, it is claimed, that the real purpose of the resurvey was to reduce the amount of the swamp lands which the state would receive under the old survey, to which a similar objection was interposed on the part of the defendant, and was sustained (Exhibits 180, 181 and 182, pp. 276 to 278, inclusive.)

The plaintiff submitted to the court several requests to charge, outlining in great part its theory of the case, a greater portion of which the District Judge refused to give; an exception was duly taken. On inquiry from the court, the defendants made no claim under the statute of limitations, and then requested the court to direct a verdict for the defendants, to which an exception was taken by the plaintiff; and the court, after delivering its opinion, so directed the jury.

To all of which exception was duly had.

ERRORS RELIED ON.

The errors alleged in the Record, and relied upon by the plaintiff in error, are as follows:

1. In holding that no error was committed by the trial court in not permitting the plaintiff to show by its witness, Oscar Palmer, that prior to 1853, and between 1850 and 1853, that the general government, through its land department, had sold lands in every section by the plats of the old survey, in town 18 north, 3 west, State of Michigan, and had thus recognized this old survey (Record, p. 52).

2. In holding that no error was committed by the trial court

in not permitting witness Oscar Palmer to testify in answer to the question, "I will ask you if it was not a fact, that in this same town and some of these sections, land was sold; take 20, 21, 22, 28 and 35, and see if they were not sold on the same section before the resurvey?" (Record, p, 52.)

3. In holding that there was no error committed by the trial court in not permitting plaintiff to show by its witness, Oscar Palmer, that the plat of the old survey of said township, 18 north, 3 west, "was a recognized government survey, and in actual use by the government, up to and including March 3, 1857," (Record, p. 52).

- 4. In holding that no error was committed by the trial court in admitting in evidence, against the objection of plaintiff, Exhibit 57, being a letter from John S. Barry to the President of the United States, dated February 3, 1842, sending inclosed therewith a copy of joint resolution of the Legislature of Michigan, approved February 1, 1842, asking for the resurvey of eighty-one whole and fractional townships in said State, all lying east of the principal meridian, except towns 16, 17 and 18 north of ranges 6, 7 and 8 west, which exhibit is set out in full on pages 64 and 65 of the Record.
- 5. In holding that no error was committed by the trial court in admitting in evidence, against the objection of plaintiff, Exhibit 58, being a letter of E. M. Huntington, Commissioner of the General Land Office, to President Tyler, dated February 17, 1842, returning to the President the letter and inclosure of February 3, 1842 (Exhibit 57), and inclosing a diagram showing the districts referred to in the resolution, and stating that the records of the land office showed no evidence of irregularities in the surveys; that all the land except one township was open to private entry, and recommending that the matter be referred to the Surveyor-General at Cincinnati for examination; on which letter is an indorsement of the President directing such reference, all of which is set out in full on pages 65 to 66 of the Record.

6. In holding that the error was committed by the trial court in admitting in evidence, against the objection of plaintiff, Exhibit 59, being a letter of E. M. Huntington, Commissioner of the General Land Office, to John S. Barry, Governor of Michigan, dated February 21, 1842, acknowledging receipt of the Governor's letter of February 3, 1842, with its inclosure (Exhibit 57), and inclosing a copy of the Commissioner's instructions to the Surveyor-General at Cincinnati, dated February 21, 1842, which instructions were to report any facts in his possession bearing on the matter, and make any suggestions that might occur to him for the correction of the supposed errors and preventing them in the future. A similar diagram to that laid before the President was inclosed, also a letter to Dr. Houghton, of October 22, 1840, from J. A. Rosseau, acknowledging some defects in surveys made by him; also directing the Surveyor-General to enforce certain standing instructions to deputy surveyors, all of which is set out in full on pages 67 to 68 of the Record.

7. In holding that there was no error committed by the trial court in admitting in evidence over plaintiff's objection. Exhibit 60, being the report of Surveyor-General Haines to E. M. Huntington, Commissioner of the General Land Office, dated March 4, 1842, in pursuance of the instructions of February 21, 1842. The report says deputies were appointed on the recommendation of parties known to the office upon which he must rely for evidence of the integrity of the deputy. As to the Rosseaus he found them employed when he took the office, and the employment was continued. Their work had been in the main satisfactory, and when errors had been found they had been corrected. In the summer of 1840, he had been informed that affidavits had been lodged with the Register of the land office at Genessee, Mich., charging irregularities in the surveys. He then details how the letter to Dr. Houghton came to be written. He had written the Register a number of times, but had received no reply,

and doubts the existence of any affidavits. Had made inquiry at other sources as to the Rosseau surveys, but failed to obtain any accurate information. As to the districts of other deputies the letter of instructions contained the first information of irregularities.

The Surveyor-General recommends that Wm. A. Burt and John II. Mullatt be employed to examine the towns charged to be erroneous, and report their condition, and if found defective, that new surveys be made at the expense of the contractors or their bondsmen.

He then explains how it might be possible for a deputy to make up fictitious returns of surveys, and says that such impositions had been practiced under some of his predecessors, and suggests that no Michigan official had ever complained to him of the state of the surveys, and that he was yet ignorant of the character of the alleged frauds.

He then makes some suggestions as to providing against future errors.

All of which is set out in full on pages 68 to 74 of the Record.

8. In holding that there was no error committed by the trial court in admitting in evidence over the plaintiff's objection. Exhibit 61, being a letter of E. M. Huntington, Commissioner of the General Land Office, to Governor Barry of Michigan, dated April 21, 1842, inclosing a copy of his instructions of the same date to Surveyor-General Haines issued in consequence of the report of the latter, directing the employment of an experienced deputy to examine the towns alleged to be fraudulently surveyed, and containing some general instructions for such deputy. All of which is set out in full on pages 74 to 75 of the Record.

9. In holding that there was no error committed by the trial court in admitting over the objection of plaintiff, Exhibit 62, being the instructions of Surveyor-General Haines to Wm. A. Burt, dated April 11, 1842, Mr. Burt being em-

ployed to make the examination. The letter recites the previous correspondence with the Commissioner of the General Land Office, and instructs Mr. Burt to examine and report upon certain towns, sending him the original field notes of some of them, all of which is set out in full on pages 75 to 77 of the Record.

10. In holding that no error was committed by the trial court in admitting over plaintiff's objection Exhibit 43, being a letter dated August 1, 1842, of Surveyor-General Johnson to Thomas H. Blake, Commissioner of the General Land Office, which transmits to the Department Mr. Burt's report on towns examined, and makes some comments on the same, found in full on page 77 of the Record.

11. In holding that no error was committed by the trial court in admitting over plaintiff's objection. Exhibit 64, being a letter dated October 4, 1842, of Blake, Commissioner of the General Land Office, to Hon. A. S. Porter, which acknowledges the receipt of a prior letter, and advises him of the receipt of the report of Mr. Burt, and that the towns examined appeared to be defective and fraudulent, and that it was the design of the office to issue the instructions for the necessary resurveys, which letter is found in full on page 78 of the Record.

12. In holding that no error was committed by the trial court in admitting over plaintiff's objection. Exhibit 65, being a letter dated April 27, 1843, from Wm. Johnson, Surveyor-General, to Thomas H. Blake. Commissioner, acknowledging receipt of advices that \$4,000 had been set apart for making the resurveys, and stating the sum was not sufficient, and that in consequence the surveys would be confined to the towns nearest the coast, and that three deputies had been instructed to be ready to take the work, which letter is found on pages 78 and 79 of the Record.

13. In holding that no error was committed by the trial court in admitting over plaintiff's objection. Exhibit 67, being

a letter dated September 16, 1844, from Wm. Woodbridge to Blake, Commissioner of the General Land Office, urging the appropriations for surveys in Michigan, and particularly the prosecution of the work of resurveying the towns alleged to have been fraudulently surveyed, and alleging that the Genesee land office was selling lands by the plats of the old survey after new one made, which letter is found in full on pages 80 to 82 of the Record.

14. In holding that no error was committed by the trial court in admitting over the objection of plaintiff, Exhibit 68, being a letter of Commissioner Blake to Hon. Wm. Woodbridge, dated September 30, 1844, acknowledging receipt of his letter of the 16th, stating that \$15,000 had been apportioned to the surveys for the district of Ohio, Indiana and Michigan, and that under instructions to the Surveyor General practically the entire sum would be expended in Michigan; that instructions had been issued for certain resurveys; that the land officers at Genesee had been written to regarding the alleged sales by the plats of the old survey, which letter is found in full on pages 82 and 83 of the Record.

15. In holding that no error was committed by the trial court in admitting in evidence over the objection of the plaintiff, Exhibit 69, being a letter of Blake. Commissioner of the General Land Office, to the Register and Receiver of the Land Office at Genesee, Michigan, dated October 1, 1844, stating he is advised that the plats of the old survey are being used in making sales, and desires to know the reason, and that these plats should have been canceled on receipt of the plats of the new survey, and proper reference made, and that the plats of the fraudulent survey should not be used, which letter is found in full on page 83 of the Record.

16. In holding that no error was committed by the trial court in admitting over the objection of plaintiff, Exhibit 71, being a letter of Richard M. Young, Commissioner of the

General Land Office, to Hon. A. Felch, dated February 17, 1849, stating that he had written Hon. S. Breese, chairman of committee of public lands, requesting the appropriation of \$10.000 for the correction of erroneous and defective surveys in southern Michigan, which letter is found in full on page 87 of the Record.

17. In holding that no error was committed by the trial court in admitting over objection of the plaintiff, Exhibit 72, being a letter dated February 17, 1849, from Richard M. Young, Commissioner, to Hon. S. Breese, requesting the insertion of \$10.000 in the appropriations for the correction of surveys in Michigan, which letter is found in full on page 87 of the Record.

18. In holding that no error was committed by the trial court in admitting in evidence over the objection of plaintiff. Exhibit 73, being a letter dated July 10, 1849, from Lucius Lvon, Surveyor-General, to Justin Butterfield, Commissioner, which acknowledges letter of the 4th ult. from Mr. Butterfield's predecessor, advising of appropriations for survevs in Michigan, and containing certain instructions as to resurveys. Commenting on these instructions thinks it better and less expensive to make entire new surveys rather than attempt joining old lines to new ones. That Mr. Burt and Mr. Risdon were then in the field making examination of survevs, their compensation to be such as the Commissioner sees fit to allow. These examinations the Surveyor-General considers necessary in order to ascertain what frauds have been committed in the surveys, also as useful in determining how the appropriation of \$10,000 would be expended. Reports have been received from Mr. Burt up to the 3d of the last month, but none from Mr. Risdon; which letter is found in full on pages 88 and 89 of the Record.

19. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection. Exhibit 75, being a statement entitled "Resurveys in the State

of Michigan," signed by Moses Kelly, clerk, dated "General Land Office, Feby. 14, 1851," being a general resume of the correspondence between the land office and the Surveyors-General and the State of Michigan, and the action of Congress in making appropriations from time to time, the principal particulars of which are contained in Exhibits 57 to 74 inclusive, which report is found on pages 96 to 100 of the Record.

20. In holding that no error was committed by the trial court in admitting in evidence over the objection of the plaintiff, Exhibit 79, being a letter dated February 10, 1852, from Surveyor-General Noble to Commissioner Butterfield, inclosing a report of Deputy Surveyor A. S. Wadsworth. letter acknowledges receipt of a letter from the Commissioner of November 25, and incloses a diagram representing the townships already resurveyed, districts reported fraudulent, and states that the balance of the prosecution of the resurveys. should they be ordered without reference to the suits pending in the United States Court, would be substantially as proposed in the letter of the 5th of March, 1851. He considers the district west of Saginaw Bay of the first importance for resurvey, and continuing with districts near Grand Traverse Bay, until all are completed. Commenting on certain rules sent in a letter from the Commissioner under date of June 25. last, he considers them of a restrictive character, and that it does not appear that the present practice of the office was in conflict of the principles therein contained, but thinks no instructions can meet the exigencies of every case, but much must be left to the judgment of the deputy. The employment of co-deputies he considers involved with practical difficulties and productive of little good. In the mineral regions, where the solar compass is used, the most of the work must be done in fair weather, and that possibly there an assistant to run random lines might be useful. In disconnecting the examinations from the work of resurveys, the expense to the government had been increased. In fixing the price for resurvey

where the districts are near the coast, the maximum price of \$6 has not been allowed, but has been where the districts were in the interior. He recommends that, if a further examination of resurveys are deemed necessary, that they should be disconnected from resurveys or new surveys, and that in townships where sales had been made or lands are occupied, that the portions sold or occupied should be treated as private claims, and the new surveys run up to the boundaries of the parcels so occupied. Letter contains other remarks and comments upon the instructions, explaining why it is necessary to deviate from them from time to time the whole matter being submitted to the judgment of the department. The report of Mr. Wadsworth bears date December 24, 1851, and purports to give a general view of the character of the country running from Saginaw to Grand Traverse, and from Grand River to Grand Traverse and towards the Mackinaw. purporting to describe character of the timber, of the soil, and the amount of land which appears to be swampy and the amount which appears to be valuable for farming purposes. Some remarks are also made on the character of the climate at different points within this territory, which letter and inclosure are found on pages 107 to 112 of the Record.

21. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 80, being a letter from Butterfield, Commissioner, to Noble, Surveyor-General, dated March 8, 1852, acknowledging a communication of the 10 ult. by the hands of Mr. Frost, the chief clerk, on the subject of the resurveys in this State, and divides the matter of the resurvey of the State into two classes, first, incomplete surveys, where a portion only of the lines of a township are found to be surveyed, but where some lines have been run and corners established such portions as can be made available by retaining all remaining undisturbed. The second class are fraudulent surveys, where there is no

evidence found of the good intent on the part of the deputy to comply with his contract, and an entire absence of the marks and monuments to designate corners, and no lines traceable. In this class of cases the lines and corners found are to be obliterated, except where parcels are occupied and the occupant insists on having the monuments preserved, in which case his requests shall be respected. Otherwise they are to establish new lines and new monuments, the work to be inspected before payment, to the satisfaction of the Surveyor-General, these inspections to be paid for at the per diem allowance, which exhibit is found on pages 112 to 113 of the Record.

- 22. In holding that no error was committed by the trial court in admitting in evidence over the objection of the plaintiff, Exhibit 82, being a letter dated June 11, 1847, from Lucius Lyon, Surveyor-General, to Richard N. Young, Commissioner, stating that in compliance with a request for a computation of the number of acres of swamp land in each district, but a mere approximation to accuracy can be given, as the old surveys show the swamp only at the intersection with the lines of survey. Not having the Ohio surveys in his possession, he will confine his estimates to Indiana and Michigan. The letter is set out in full on page 126 of the Record.
- 23. In holding that no error was committed by the trial court in admitting in evidence over the plaintiff's objection, Exhibit 83, being a letter dated June 7, 1853, from John Wilson, Commissioner, to the Surveyor-General at Detroit, stating that in adjusting the swamp selections in the Grand River district a difficulty had arisen over the supplemental list dated December 8, 1852. The Surveyor-General, under date October 4 last, had been instructed to make out these lists in lieu of the former ones. Which in the heading of the list was evidently lost sight of. In certain towns the selections are the same, while in others the supplemental list contains fewer selections. The Commissioner inquires which is to govern,

the original or the supplemental list? Whether the supplemental list is to be considered corrective or to be taken in lieu of the original. The letter is to be found in full on pages 126 and 127 of the Record.

24. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 84, being a letter dated July 29, 1853, from John Wilson, Commissioner, to the Register at Detroit, transmitting certified copy of Approved List No. 1 in his district, and containing instructions as to how the entries concerning should be made in the tract book and in the plats of his office, and to advise the Commissioner of any errors, etc., he may find, which letter is found on pages 127 and 128 of the Record.

25. In holding that no error was committed by the trial court in admitting in evidence over the plaintiff's objection, Exhibit 85, being a letter dated July 30, 1853, from John Wilson, Commissioner, to the Register at Detroit, transmitting list A, No. 1, of his district, showing selections of swamp land rejected as being disposed of prior to the grant, and instructing him as to the manner of making the entries in connection of the entries made from the Surveyor-General's list, on the books of the office, which letter is found on page 128 of the Record.

26. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 86, being a letter dated September 5, 1863, from J. M. Edmunds, Commissioner, to the Register at Ionia, Michigan, stating that certain descriptions were confirmed selections, and would be approved to the State; that certain others though selected would not be approved, as they did not appear in the list subsequently made by the Surveyor-General to supersede the previous list, but they must be restored to the market in the usual way before they will be subject to private entry, which letter is found on pages 128 and 129 of the Record.

27. In holding that no error was committed by the trial

court in admitting in evidence over plaintiff's objection, Exhibit 87, being a letter dated September 19, 1854, from John Wilson, Commissioner, to Chapman, Surveyor-General, Detroit, inclosing an affidavit of O. M. Barnes, relating to the character of certain lands in the Ionia district, and that Mr. Barnes had been advised that if the swampy character of the land was doubtful, he would be permitted to contest the claim of the State, and that from an examination of the plats and field notes the Commissioner thinks there is doubt, which letter is found on page 129 of the Record.

28. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 88, being the reply of Surveyor-General Chapman dated September 27, 1854, to the preceding letter, stating that in determining the swamp lands inuring to the State the instructions of November 21, 1850, had been followed, the State having accepted the field notes and plats as the basis of selections. That this course was followed in making up the lists. In the case in question there are three ways of drawing the lines, which he illustrates by a diagram annexed to the letters. The selections are based on a survey made in 1826, and the land may then have been of the character granted. Some defects in the affidavit of Mr. Barnes are pointed out, and on the whole is of the opinion that the swamp selection is correct, which letter is found on pages 129 and 131 of the Record.

29. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 89, being a letter dated October 6, 1854, from John Wilson, Commissioner, to Chapman, Surveyor-General, acknowledging the receipt of the letter (the preceding assignment) stating none of the three ways of connecting the swamps as indicated in the diagram appear to be proper. In this case he has decided to give Mr. Barnes an opportunity of furnishing evidence as to the character of the land in question, and indi-

cates the character of the testimony to be furnished, which letter is found on pages 131 and 132 of the Record.

30. In holding that the trial court committed no error in admitting in evidence over plaintiff's objection, Exhibit 90, being a letter dated September 18, 1852, from Surveyor-General Noble to Commissioner Butterfield, calling attention to the purchase of a tract by Mr. Bartlett of the Register at Kalamazoo, prior to the receipt of the swamp lists. That nothing had been heard from the Register at Detroit, Flint and Sault Ste. Marie, in reference to the lists in their hands for annotation.

A supplemental list embracing all new surveys will be furnished the Commissioners at an early day, and inquires in regard to towns resurveyed, which will govern, the old or new surveys, which letter is found on page 132 of the Record.

- 31. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 91, being a letter dated October 4, 1852, from John Wilson, Commissioner, to Noble, Surveyor-General, requesting him to re-examine his notes and plats as to the tract desired by Mr. Bartlett, and if swamp, advise him that the same is not subject to entry and if not, to report to the Commissioner's office, and to do the same as to the parcels sold by the Register at Kalamazoo. That in makin ξ out supplemental lists he should make three copies, one for himself, the Register and for the Commissioner; that in towns resurveyed he should make new lists of selections, designating the lists as being in lieu of the former ones, which letter is found at page 133 of the Record.
- 32. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 92, being a letter dated June 24, 1853, from Surveyor-General Chapman to Wilson, Commissioner, acknowledging receipt of a letter of June 7; that in making up the supplemental list it should have been stated at the head of the list or

in the letter of transmissal, that it was in lieu of the former list, that such lists were made up without reference to the old lists or plats. The question as to which list should govern he supposed would be decided by the Commissioner, but thinks the supplemental list should govern, and that hereafter it will be so considered, which letter is found on pages 133 and 134 of the Record.

33. In holding that no error was committed by the trial court in admitting in evidence over objection of plaintiff, Exhibit 93, being a letter dated October 29, 1853, Surveyor-General Chapman to Commissioner Wilson, transmitting Supplemental List No. 2, Grand River District, which letter is found on page 194 of the Record.

34. In holding that no error was committed by the trial court in admitting over plaintiff's objection. Exhibit 94, being a letter dated November 7, 1853, Commissioner Wilson to Surveyor-General Chapman, acknowledging receipt of the list contained in the foregoing letter, and that the original list will be altered to conform to it, which letter is found on page 134 of the Record.

35. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection. Exhibit 95, being a letter dated January 31, 1855. Surveyor-General Chapman to Commissioner Wilson, transmitting list of swamp lands in Cheboygan land district, surveyed and platted up to January 15, 1855. With this list he believes descriptions of swamp lands in every township in the State had been transmitted to the Commissioner, and asks if it will be proper to furnish new lists as heretofore of lands hereafter resurveyed, which letter is found on page 135 of the Record.

36. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 96, being a letter dated February 12, 1855. Wilson, Commissioner, to Chapman, Surveyor-General, acknowledging receipt of the lists contained in the last letter, and advising him

that it will be necessary to continue to furnish the lists as heretofore, which letter is found on page 135 of the Record.

37. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 97, being the published report of the Commissioner of the Michigan State Land Office for the year ending September 30, 1852, which states that no lists had yet been received of the swamp lands; gives a letter from the General Land Office, dated November 2, 1852, on the subject, which referring to an application to have certains lands approved in advance of the regular lists, which lands were in three different land districts, states that a rule has been established not to take action on isolated tracts without taking action on the entire list in that district, as it would retard the final adjustment, but the matter of selection would be acted upon at the earliest period; all of which is set out in full on page 136 of the Record.

38. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection. Exhibit 98, being a letter dated January 20, 1854. Commissioner Wilson to Governor Parsons of Michigan, requesting that he cause to be erased from Approved List No. 1, Kalamazoo district of swamp lands, a certain tract erroneously approved, the lands being sold in 1836, to enter in place of it the tract intended to be approved, and to advise the General Land Office of the corrections, which letter is found on page 136 of the Record.

39. In holding that no error was committed by the trial court in admitting in evidence, over plaintiff's objection, Exhibit 99, being a letter dated January 30, 1854, Governor Parsons to John Wilson, Commissioner, acknowledging the preceding letter and advising that the corrections had been made, which letter is found on page 137 of the Record.

40. In holding that no error was committed by the trial court in admitting in evidence, over plaintiff's objection, Ex-

hibit 100, being a letter dated February 24, 1854, Commissioner Wilson to Governor Parsons, requesting him to cause the copy of Approved List No. 4, Genesee district, swamp lands, to be corrected by erasing certain descriptions, and in place thereof inserting certain others, and advise the General Land Office if done, which letter is found on pages 137 and 138 of the Record.

41. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 101, being a copy of Ionia Approved List No. 4, from the State Land Office, showing erasures in the list with reference to the Commissioner's letter of February 24, 1854 (Exhibit 100, p. 137), which list is found on pages 138 and 139 of the Record.

42. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection. Exhibit 102, being a letter dated March 31, 1854, from Commissioner Wilson to Governor Parsons, requesting him to cause certain corrections to be made in the copy of Genesee Approved List No. 1, by erasures and insertion of descriptions, and as to certain others, inasmuch as they had been disposed of by the general government subsequent to September 28, 1850, to mark them "suspended," and to advise the General Land Office of the corrections, which letter is found on pages 139 and 140 of the Record.

43. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 103, being Genesee Approved List No. 1, from the State Land Office, showing the corrections and annotations requested in the Commissioner's letter, March 31, 1854, with reference to the same, which list is found on pages 140 to 142 of the Record.

44. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 104, being a letter dated April 25, 1854, from Commis-

sioner Wilson to Governor Parsons, requesting him to cause the copy of Genesee Approved List No. 2 to be corrected by erasing certain descriptions, adding others and changing other items, and to advise the General Land Office of the corrections, which letter is found on pages 142 and 143 of the Record.

45. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 105, being Genesee Approved List No. 2, from the State Land Office, showing the erasures, corrections and additions requested in the Commissioner's letter of April 25, 1854 (Exhibit 104), which list is found on pages 143 to 145 of the Record.

46. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 106, being a letter dated May 29, 1854, from Commissioner Wilson to Governor Parsons, requesting that certain erasures, corrections and annotations be made on the copy of Genesee Approved List No. 3, and to report the same to the General Land Office, which letter is found on pages 145 and 146 of the Record.

47. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 107, being Genesee Approved List No. 3, showing the erasures, corrections and annotations requested by the Commissioner's letter of May 19, 1854, with reference to the same, which letter is found on pages 146 to 148 of the Record.

48. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 108, being a letter from Commissioner Wilson to Governor Parsons, dated July 1, 1854, requesting that certain corrections be made in the copy of the Approved List No. 3, Sault Ste. Marie district, and that the General Land Office be notified of the corrections, which letter is found on page 148 of the Record.

49. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 109. being a letter from Governor Parsons to Commissioner Wilson, dated July, 1854, which acknowledges receipt of the letter of Commissioner Wilson of July 1, 1854 (Exhibit 108), and advises him that the corrections requested have been made, which letter is found on page 148 of the Record.

50. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 110, being Surveyor-General's List No. 1, Grand River district, from the State Land Office, so far as it relates to towns 18 north, 3 and 4 west, which exhibit is found on pages 149 to 153 of the Record.

51. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 111, being Approved List No. 1, Ionia district, from the State Land Office of Michigan, so far as it relates to towns 18 north. 3 and 4 west, which exhibit is found on pages 153 to 157 of the Record.

52. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 113, being the patent of the United States to the State of Michigan, known as Ionia No. 2, so far as relates to the lands in town 18 north and 4 west, which exhibit is found on pages 157 to 159 of the Record.

53. In holding that no error was committed by the trial court admitting in evidence over plaintiff's objection, Exhibit 114, being field notes of the resurvey of sections in township 18 north, range 3 west, involved in the declaration in this cause, which exhibit is found on pages 159 to 169 of the Record.

54. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 115, being a letter from Surveyor-General Noble to Commissioner Butterfield, dated April 21, 1852, referring to

the letter of the Commissioner of April 13. States that the certificate in the Kalamazoo list does not appear to admit of doubtful construction, and incloses a new certificate for the Grand River list to be substituted for the original, and that the lists as near as practicable be made up strictly in accordance with the instructions of the Commissioner; that the remaining lists would be made up leaving out the tracts sold prior to September 28, 1850, which letter is found on page 169 of the Record.

55. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 116, being a letter from Alexander F. Bell. Register of Ionia Land Office, to the Commissioner of the General Land Office, dated September 23, 1854, inquiring whether lands appeared to have been on the maps of the old survey to have been selected by the Surveyor-General as swamp lands, and not appearing on the maps of the resurvey and in the approved list as swamp lands, are subject to private entry at his office, which letter is found on page 169 of the Record.

56. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 117, being a letter from Commissioner Wilson to the Register of the Land Office at Ionia, dated October 3, 1854, and stating that he should regard all selections by the Surveyor-General as valid until furnished by him with lists designated, "In lieu of the originals in townships resurveyed and platted," and where lands have been approved according to the old plats, no action could be taken by the Register until the claim of the State has been rejected, which letter is found on page 170 of the Record.

57. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 119, being a letter from Commissioner Wilson to Governor Bingham, dated February 24, 1855, requesting the suspension of action on Ionia Approved Lists Nos. 2 and 3, be-

cause Surveyor-General had transmitted to the Commissioner certain lists in the Cheboygan district in townships resurveyed and platted, which lists he states, "abrogates and supersedes all lists of swamp lands heretofore made of the townships contained in it," giving a list of the town affected, which letter is found on page 171 of the Record.

58. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 121, being a letter from Commissioner Edmunds, dated June 18, 1864, referring to certain selections, stating that they were made from the field notes of the old surveys, and most of the selections in those towns were approved and patented to the State on the old surveys prior to the receipt of the selections based on the new surveys. Supplemental List D being such a list. And the office had decided that, having acted upon one, they would ignore the other, and, therefore, the original list based on the old surveys should govern in those townships, which letter is found on pages 173 and 174 of the Record.

59. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 123, being the plat or resurvey of township 18 north, range 3 west, in the State of Michigan, which plat is found opposite page 174 of the Record.

60. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 124, being Surveyor-General's Supplemental List No. 3. Grand River district, from the State Land Office, so far as relates to towns 18 north, ranges 3 and 4 west, which list is found on pages 175 to 177 of the Record.

61. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection. Exhibit 125, being a letter from Surveyor-General Emerson to Commissioner Hendricks, dated May 12, 1858, transmitting supplemental lists of swamp selections in the Chebevgan,

Grand River and Saginaw land districts of townships resurveyed and platted since the dates of the last supplemental lists, which lists complete the swamp land lists, with the exception of certain towns yet requiring corrections, which letter is found on page 177 of the Record.

62. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 126, being a letter from Commissioner Hendricks to Surveyor-General Emerson, dated May 20, 1858, acknowledging receipt of the list referred to in the letter of May 12, 1858 (Exhibit 125), which letter is found on page 178 of the Record.

63. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 127, being Approved List No. 10, Ionia land district, from the State Land Office, so far as it relates to towns 18 and 28 north, range 3 west, which exhibit is found on pages 178 to 180 of the Record.

64. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 128, being a letter from Commissioner Edmunds to the Governor of Michigan, dated May 26, 1866, transmitting a copy of Approved List No. 10, Ionia district, and requesting the Governor to transmit his requests for patents for the lands contained in it, which letter is found on page 180 of the Record.

65. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 129, being a letter from Governor Crapo of Michigan to Commissioner Edmunds dated May 31, 1866, acknowledging the receipt of Approved List No. 10, Ionia district, and requesting that patents might issue for the same, which letter is found on page 180 of the Record.

66. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Ex-

hibit 130, being patent of the United States to the State of Michigan, No. 20, Ionia district, so far as it relates to townships 18 and 28 north, range 3 west, which patent is found on pages 181 to 182 of the Record.

67. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 131, being a letter from Commissioner Drummond to the Governor of Michigan, dated March 25, 1873, acknowledging receipt of a letter of the Governor's of the 4th inst., asking that certain lands be patented to the State as swamp lands, and advising him that the records show the lands to have been selected in 1852, and shortly afterwards approved, but never pented to the State. Resurveys having been ordered for the ownships referred to, new lists were reported which do and to contain the descriptions mentioned, and are therefore not recognized by the office as swamp selections. Those in the township selected by the resurvey are suspended because contained in an Indian reservation, which letter is found on pages 182 and 183 of the Record.

68. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection. Exhibit 132, being a letter from Commissioner State Land Office Clapp to Commissioner Burdett, dated April 15, 1875, transmitting a list of swamp and overflowed lands, contained in Supplemental List C, Cheboygan district, of the townships resurveyed, calling attention to the removal of the reservation for Indian purposes, and requesting that the list of lands be approved and patented to the State at an early day, which letter is found on page 183 of the Record.

69. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 133, being letter from Acting Commissioner Curtis to the Governor of Michigan, dated November 10, 1875, acknowledging the receipt of a letter of October 28, calling attention to a list of lands in townships 35 and 36 north, range

3 west, and stating that they being found free from conflict, they had been submitted to the Secretary of the Interior for approval to the State as swamp lands, which letter is found on pages 183 and 184 of the Record.

70. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 134, being Approved List No. 22. Traverse City district, the same covering towns 35 and 36 north, range 3 west, which exhibit is found on pages 184 to 187 of the Record.

71. In holding that no error was committed by the trial court in admitting in evidence, over plaintiff's objection, Exhibit 135, being a patent from the United States to the State of Michigan, No. 35, coverings descriptions in towns 35 and 36 north, range 3 west, which exhibit is found on pages 187 to 189 of the Record.

72. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection. Exhibit 136, being a letter from Commissioner of the State Land Office Clapp to Commissioner Drummond, dated April 30, 1874, transmitting for examination a list of lands contained in Supplemental List No. 3, Grand River district, in townships resurveyed, requesting the approval of each parcel, and that patents be issued; or, if that cannot be done, the State may receive indemnity therefor. The list inclosed covers selections in towns 18 north and 3 west, and a large number of other towns, which exhibit is found on pages 189 to 193 of the Record.

73. In holding that no error was committed by the trial court in admitting in evidence, over plaintiff's objection, Exhibit 137, being a letter from Commissioner Burdett to Commissioner of the State Land Office Clapp, dated June 15, 1874, acknowledging the receipt of a list contained in a letter of Commissioner Clapp, of April 30, 1874 (Exhibit 136), and stating that as to certain townships the greater part of the selections were made and approved under the old survey, and

as to those the old selections must govern. That as to certain other of the descriptions a portion had been located by land warrants, and others had been approved to the State for railroad and canal purposes, and others sold prior to the swamp grant of September 28, 1850, and that other tracts appear to be vacant and would be submitted to the Secretary of the Interior for his approval, which letter is found on pages 193 to 196 of the Record.

74. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 138, being a letter of Clapp, Commissioner of the State Land Office, to Commissioner Burdett, dated August 12, 1875, referring to the letter of Commissioner Burdett, dated June 15, 1874 (Exhibit 137), requesting that the lands noted in the Commissioner's letter as appearing vacant might be submitted for approval without further delay, and inclosing a list of lands, which letter is found on pages 196 and 197 of the Record.

75. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 139, being a letter from Acting Commissioner Curtis to Commissioner of the State Land Office Clapp, dated September 13, 1875, acknowledging receipt of Commissioner Clapp's letter of August 12, 1875 (Exhibit 138), advising him that certain tracts were included in Ionia List No. 20, and that certain other of the tracts were submitted to the Secretary of the Interior, for approval on the 10th inst., which letter is found on pages 197 and 198 of the Record.

76. In holding that no error was committed by the trial court in admitting, in evidence over plaintiff's objection, Exhibit 140, being a copy of Approved List No. 20, Ionia district, so far as relates to certain descriptions in town 18 north, 3 west, which list is found on pages 198 and 199 of the Record.

77. In holding that no error was committed by the trial court in admitting in evidence, over plaintiff's objection, Exhibit 141, being a patent from the United States to the State of Michigan, No. 34, for certain swamp lands in town 18 north, 3 west, the same lands contained in Exhibit 140, which patent is found on pages 199 and 200 of the Record.

78. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 142, being a certificate of the Commissioner of the State Land Office, dated June 16, 1892, from which it appears that certain lands in towns 18 north, ranges 3 and 4 west, and other towns, are not found in any approved list, nor included in any patent of the United States to the State of Michigan on file in the State Land Office; and further, that no swamp lands in township 18 north, range 3 west, are included in any approved list on file in that office, except Ionia No. 1, No. 10 and No. 20, or in any patent, except patents No. 20 and No. 34, and reciting similar facts as to other lands not involved in the declaration in this case. Which certificate is found on pages 200 and 201 of the Record.

79. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 143, being a letter of the Register and Receiver of the United States Land Office at Detroit to the Commissioner of the State Land Office, dated September 10, 1877, transmitting a copy of a letter from the Commissioner of the General Land Office to the Register and Receiver, dated September 6, 1877, and advising the State that it has 60 days to appeal from the decision of the Department contained in this letter of the Commissioner referring to certain tracts of land included in homestead entries found in conflict with the claim of the State. Says that the lands were embraced in Supplemental List D., and stating that the lands were in towns approved and patented, based on the old survey, and that for that reason the claim of the State to the particular parcels had been

rejected, which letter is found on pages 201 to 202 of the Record.

80. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 144, being a letter dated June 26, 1880, from Commissioner Williamson to the Governor of Michigan, advising him of the receipt of a letter of the 17th inst. inclosing a list of lands in township 24 north, range I west, claimed as belonging to the State under the swamp grant, and stating that the list referred to was superseded by lists made on the resurveys, and as these lists do not include the lands claimed by the State, they were not recognized as swamp selections, and that the land on the odd numbered sections had all been certified to the State for railroad purposes, which letter is found on pages 202 and 203 of the Record.

81. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 145, being a letter dated July 27, 1881. from Governor Jerome to Secretary of the Interior Kirkwood, inclosing a list of lands which had been approved to the State, and requesting patents therefor, which letter and the list inclosed is found on pages 277 and 203 of the Record.

82. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 147, being a letter from Commissioner McFarland to the Governor of Michigan, dated August 27, 1881, acknowledging receipt of the letter of Governor Jerome of July 27, 1881 (Exhibit 145), stating in reply that the records of the office showed that certain of the descriptions had been selected and approved as swamp lands, but before patent had been issued resurveys had been made and a new list prepared, in which the parcels do not appear as swamp lands, and therefore they could not be treated as such. That another description had already been patented to the State, erroneously, as being land confirmed to purchasers under the United

States, under the act of March 3. 1857, and that certain of the remaining tracts would be patented to the State at an early day, which letter is found on page 204 of the Record.

83. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 147, being a letter from Governor Jerome to Commissioner of the General Land Office, dated March 20, 1882, inclosing a letter from the Commissioner of the State Land Office, together with the list of lands for which a patent was requested, a letter of the Commissioner of the State Land Office, dated March 18, 1882, asking the Governor to request patents on the inclosed, which letter and its inclosures are found on page 205 of the Record.

84. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 148, being a letter from Commissioner McFarland, to the Governor of Michigan, dated March 29, 1882, acknowledging receipt of the Governor's letter of the 20th inst. (Exhibit 147), stating that certain of the descriptions had been sold by the general government prior to 1850; that others of the tracts are reported as swamp selections, May 12, 1858, were November 12, 1867, selected for the Jackson. Lansing & Saginaw Railroad for railroad purposes, and the State's claim to the same lands under another grant would not be recognized. That another parcel does not appear on the plats of the government survey; that other parcels have not been selected as swamp lands, and that the remaining parcels do not appeaer in the lists found on the resurveys in the respective townships, and for that reason the request of the Governor cannot be complied with, which letter is found on page 206 of the Record.

85. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 149, being a letter from Commissioner Sparks to the Register and Receiver at Detroit, dated March 25, 1887,

stating that certain descriptions upon which homestead entries had been made were suspended for conflict with apparent claim of the State of Michigan under the swamp grant. Which descriptions were contained in Supplemental List D, transmitted after the resurveys in those towns, but in which towns the greater portion of lands had been carried into patents based on the old survey prior to the reception of the supplemental list, and that therefore the selections in the supplemental list would not be recognized, the claim of the State based on the supplemental list would be held for rejection, and they are requested to notify the State authorities of the usual time for appeal, which letter is found on pages 207 and 208 of the Record.

86. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 150, being a letter from Commissioner Sparks to Register and Receiver at East Saginaw, dated November 8, 1887, stating that as to a certain description embraced in a cash entry at that office it appears to be claimed by the State of Michigan as swamp lands, which claim is founded on a selection made December 24, 1852, subsequent to which time a resurvey was made and a new list prepared, which did not contain the description involved. The field notes do not show the parcels to be swamp and over-flowed within the meaning of the grant, not being approved or patented to the State, claim of the State is held for rejection, and the Register and Receiver are requested to notify the Governor of the State, which letter is found on page 208 of the Record.

87. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 151, being a letter from Commissioner Wilson to the Register and Receiver at Ionia, dated January 30, 1868, and Exhibit 151 A, being a letter from Commissioner Wilson to the Register and Receiver at Ionia, dated July 30, 1869.

Exhibit 151 being the decision of the Commissioner reject-

ing the entries of Addison P. Brewer and others for lands in 18, 19 and 20 north, range 3 west, their entries being contested by the Flint & Pere Marquette and Jackson, Lansing & Saginaw Railroad Companies, and Messrs. Remick and Merrill. These lands were selected by the State in 1852 as swamp lands, and in 1857 a resurvey was made of the townships, and a new list prepared in 1858. The railroad companies claim the land under the Act of Congress of June 3d, 1856. The lands in dispute were within the fifteen-mile limit of the several roads, and the indemnity selections were certified to the roads in 1859, 1862 and 1864. Mr. Remick in 1854 and Mr. Merrill in 1863, had applied to enter the lands, at the United States Land Office. The applications of Brewer and others were made at the United States Land Office in 1866. The Commissioner holds that at the time of the adjustment of the railroad grant, and at the time of the application for entry of Messrs. Remick and Merrill, the selections of the State in 1852 operated as a withdrawal of the lands from public entry, and not subject to disposal under the terms of the railroad grant. The lands being resurveyed and a new list made, the selections of the State must be considered as having been relinquished, and the lands should now be restored to market after public notice and the locations canceled. Parties were allowed thirty days in which to appeal to the Secretary of the Interior.

Exhibit 151 A advises the Register and Receiver of the affirmation of the decision of the Commissioner by the Secretary of the Interior, and directs them to return the scrip, cash or warrants upon which the entries were made to the proper parties, note the cancellation of the entries on the book of the office. and to offer the lands at public sale in the usual manner, which exhibits are found on pages 209 to 213 of the Record.

88. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhi-

bit 152, being a letter from W. R. Wood, chief clerk of the Surveyor-General's office, dated May 13, 1858, stating the Surveyor-General left day before with maps, field notes, etc., of the surveys in Michigan to be transferred to the State authorities, and that he had mailed to the Commissioner's address the original supplemental lists in the Cheboygan, Grand River and Saginaw land districts, made up from the resurveys since the date of the last supplemental lists for those districts, which latter lists had been transferred to Michigan authorities in May, 1857, which letter is found on page 213 of the Record.

89. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 153, being from the State Land Office of Michigan, original Supplemental List E of swamp lands in the Cheboygan districts, which list is found on pages 213 and 215 of the Record.

90. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 154, being from the State Land Office of Michigan, Approved List No. 11, of swamp lands in the Ionia district, which exhibit is found on pages 215 to 218 of the Record.

91. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 155, being a letter from Governor Crapo to Commissioner Edmunds, dated June 20, 1866, acknowledged the receipt of a copy of Approved List No. 11, and requesting that patents issue for the same, which letter is found on page 218 of the Record.

92. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 156, being copy of patent of the United States to the State of Michigan, No. 22, covering lands in towns 28 north, range 4 west, and 24 north, range 9 west. The same lands

as are included in Approved List No. 11 (Exhibit 154), which patent is found on pages 218 to 220 of the Record.

93. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 157, being a letter of James W. Sanborn, Commissioner of the State Land Office to Governor Wisner, dated April 5. 1859, inclosing to the Governor a copy of the letter of Commissioner Hendricks to Treadwell, Commissioner of the State Land Office, dated December 18, 1858, and lists of towns inclosed in the latter letter. Also other documents showing the difference in the acreage of swamp lands under the old and the resurveys. In certain towns showing a decrease by the resurvey of over 78,000 acres, and in the lands already patented to the State a difference of 235,000 acres. documents are included showing the difficulty in locating the lands described in the patents by reason of the discrepancies in the two surveys, and submitting the whole matter to the Governor for his advice in the premises, which letter is found on page 221 of the Record.

94. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 159, being a letter from Samuel S. Lacey, Commissioner of the State Land Office, to Commissioner Edmunds, dated July 10, 1861, inclosing Statement B, as attached to the report contained in Exhibit 158, asking when the lands appearing to have been unpatented may be patented to the State of Michigan, which letter is found on page 225 of the Record.

95. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 161, being a copy from the records at Washington of the Surveyor-General's List No. 1. Grand River district. so far as it covers towns 18 north, range 3 and 4 west, which exhibit is found on pages 231 to 234 of the Record.

96. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Ex-

hibit 162, being a copy from the General Land Office of Ionia Approved List No. 1, so far as it covers towns 18 north, ranges 3 and 4 west, which exhibit is found on pages 234 to 236 of the Record.

97. In holding that no error was committed by the trial court in admitting in evidence over plaintiff's objection, Exhibit 163, being a tax deed from the State of Michigan by the Auditor-General of the State of Michigan, to C. A. Rust, dated July 30th, 1892, issued in pursuance of a sale of the lands in controversy, for the delinquent taxes for the year 1888, at a sale thereof made May 4th, 1891, for the sum of \$350.24, which exhibit was produced in evidence at page 240 of the Record, and is found in full at page 241.

98. The said Circuit Court of Appeals erred in holding that that there was no error committed by the trial court in rejecting and excluding on plaintiff's offer, the records and files in the case of the United States vs. Henry Nicholson et al., in the United States Circuit Court for the Eastern District of Michigan, being Exhibit 175A. This was an action brought by the United States against Henry Nicholson and his bondsmen, based on the contract of Nicholson with Surveyor-General Haines, dated the 20th day of July, #838, for the survey according to the laws of the United States and the instructions of the Surveyor-General of towns 18, 19 and 20 north. ranges 1, 2 and 3 west, and the bond given in pursuance of that contract, dated the 20th of July, 1838, alleging as breaches of the condition of the bond that Nicholson as deputy surveyor did not well and truly and faithfully, according to the laws of the United States and the instructions of the Surveyor-General, make and execute the surveys required under the terms of his contract, and did not return the field notes of such a survey, and that he did not, with his chainmen and axemen and flag bearers, lay out and subdivide the towns in the sections as required to do by the contract. The plea was one of performance, and that if there had been a non-performance, full payment and satisfaction had been made by the defendants, and that the bond was released and discharged. On the trial of the case before a jury on the 25th day of November, 1850, there was a verdict in favor of the defendants, which records and files, so far as they have a bearing on this issue, are found on pages 259 to 264 of the Record, (opinion p. 345).

99. The said Circuit Court of Appeals erred in holding that there was no error committed by the trial court in rejecting and excluding the records and files in the case of the United States vs. Henry Brevoort et al., in the United States Circuit Court for the Eastern District of Michigan, being Exhibit 175B. This action was in the same form as the action against Nicholson, set forth in the preceding assignment, his contract bearing date December 13, 1839, covering towns 24, 25, 26 and 27 north, ranges 1, 2 and 6 west, and towns 25, 26 and 27 north, ranges 3, 4 and 5 west, and towns 24, 25 and 26 north, range 7 west. Declaration alleges in substance a non-performance of the contract in accordance with the laws of the United States and the instructions of the Surveyor-General, and the plea is that the contract was fully performed. On a trial of the cause before a jury on the 23d day of November, 1850, there was a verdict for the defendants, which records and files, so far as they bear upon this issue, are found on pages 264 to 271 of the Record.

100. The said Circuit Court of Appeals erred in holding that there was no error committed by the trial court in rejecting and excluding from evidence on the offer of plaintiff, Exhibit 176, being a letter dated December 13. 1850, from J. M. Howard to Secretary of the Interior Stewart, reciting the institution of suits in the United States Court against Deputy Surveyors Nicholson, Brevoort, and others, at the suggestion of Lucius Lyon, the late Surveyor-General.

Mr. Howard was the counsel employed in the cases for one of the defendants, Mr. Mullett, and gives the history of the trial of the case against Brevoort, and alleges that there was not the slightest proof that the returns of the surveys by Brevoort were fraudulent or fictitious, as had been reported, and states that the government relied upon the testimony of Wm. A. Burt, the deputy surveyor, who had made an examination, under instructions of Surveyor-General Lyon, of the surveys in controversy, in April, 1849, and the following months, and indicates that Mr. Burt received, as his compensation for these surveys, \$2,500 more than he was by law entitled to receive, and from his testimony it appeared that he found many of the old monuments of the old surveys, and that a large portion of the country examined had been run over by fire, which had consumed most of the timber, and the same facts were proved by other witnesses, which letter is found on pages 271 to 272 of the Record.

101. The said Circuit Court of Appeals erred in holding that there was no error committed by the trial court in rejecting and excluding from evidence on offer of plaintiff, Exhibit 177, being a letter from United States District Attorney Bates to Hon. James L. Conger, dated February 10, 1851, referring to the trial against Brevoort and Mullett; states that the cause was tried in the previous December, and had been taken to the Supreme Court on bill of exceptions, but the evidence of the trial was conclusive that the surveys had been faithfully fulfilled, and that eventually the defendants would have a verdict, which exhibit is found on page 272 of the Record.

102. The said Circuit Court of Appeals erred in holding that there was no error committed by the trial court in rejecting and excluding from evidence on the offer of plaintiff, Exhibit 178, being a letter from United States District Attorney Bates to Commissioner Butterfield, dated February 11, 1851, reciting in substance the facts stated in Exhibit 177, referred to in the preceding assignment, which letter is found on page 273 of the Record.

103. The said Circuit Court of Appeals erred in holding that there was no error committed by the trial court in rejecting and excluding from evidence on the offer of plaintiff, Exhibit 179, and the inclosures contained in it, being a letter from Chas. Noble, Surveyor-General, to Commissioner Butterfield, dated February 28, 1851, inclosing two letters of Henry Brevoort, Jr., making charges against the late Surveyor-General Lucius Lyon. The first letter is dated February 11, 1851, and charges that Lyon had been given contracts for districts too large for him to execute in person, and had let them out to other persons, so that he could not run and mark the lines as he was required to do by the general instructions governing surveying contracts. That he did not accompany his surveying parties to the districts contracted. but remained at Detroit and Lansing sufficient time so that he had not given over five or six weeks to the field work covvered by his contracts, and that while the instructions required the surveys to be made by the use of Burt's Solar Compass, Lyon had only one such instrument for the entire party, and that he had failed to pay numbers of the men who were in his employ. The second letter is dated February 14th, 1851, replying to a letter of the 7th inst., from Noble to Brevoort, requesting him to furnish the proof of his statement. in which Mr. Brevoort says he is ready to produce competent testimony in any court whenever called upon to do so, which letters are found on pages 274 to 276 of the Record.

104. The said Circuit Court of Appeals erred in holding that there was no error committed by the trial court in rejecting and excluding from evidence over plaintiff's objection. Exhibit 180, being a letter from Wilson, Commissioner, to Surveyor-General Noble, dated January 15, 1853, stating that the order to determine what action should be had with reference to the Surveyor-General's office in view of the Act of Congress of 1840, relative to the closing of the office, suggests that the chief clerk, Mr. Frost, be sent to Washington to per-

sonally give such information and receive such instructions as are desired, which exhibit is found on page 276 of the Record.

105. The said Circuit Court of Appeals erred in holding that there was no error committed by the trial court in rejecting and excluding from evidence, Exhibit 181, being a letter from Surveyor-General Noble to Commissioner Wilson, dated February 14, 1853, stating that he has prepared in the limited time allowed him a schedule of the field notes and office work yet to be completed in his office, and that the bearer, Mr. Frost, had been detailed to present the same, and that he would give such further information as he deemed important for the Commissioner's office. Attached to the letter is the schedule referred to, showing ten townships of resurveys not yet completed, and seven townships in the Upper Peninsula unsurveyed, and seven townships the surveys of which made in 1851 were suspended, and that a number of towns yet to be platted and the notes transcribed, which exhibit is found on pages 277 and 278 of the Record.

106. In holding that there was no error committed by the trial court in refusing to give plaintiff's request to charge No.4. which request is as follows:

The act of Congress made it the duty of the Secretary of the Interior to identify the lands granted, and when he tendered to the State of Michigan the election to receive the lands granted, according to the field notes of the government survey, as the basis of identification, in accordance with the instructions under date of November 21, 1850, which method of identification was accepted by the Legislature of the State by an act passed and approved June 21, 1851, the method so tendered and accepted became a compact between the State of Michigan and the United States, and was binding upon both parties (Record p. 287.)

107. In holding that there was no error committed by the

trial court in refusing to give plaintiff's request to charge No. 5, which request is as follows:

The Secretary of the Interior having approved the selections contained and designated by legal subdivisions in a list called the Ionia Land District No. 1, over his hand, and bearing date the 27th day of October, A. D. 1853, and made a plat thereof, under and in accordance with said act of Congress, and forwarded said list of legal subdivisions and plat to the Governor of the State of Michigan, and suggested that the Governor request patents therefor from the United States. and the Governor having requested patents to be issued therefor on the 31st day of January, 1854, and the legal subdivisions in issue in this suit being contained in and designated as swamp lands in said list and plat as swamp lands inuring to the State of Michigan under said act of Congress, the title to the legal subdivisions described in the plaintiff's declaration in issue in this suit became fully identified and fully vested in the State of Michigan (Record p. 287.)

108. In holding that there was no error committed by the trial court in refusing to give plaintiff's request to charge No. 6, which request is as follows:

That after making said list and plat and forwarding them to the Governor of the State of Michigan, the work of issuing the patents therefor, as requested by the Governor, was merely ministerial, and the Secretary of the Interior could not deprive the State of Michigan of such lands by neglecting or refusing to issue patents therefor (Record, p. 287.)

109. In holding that there was no error committed by the trial court in refusing to give plaintiff's request to charge No. 7, which request is as follows:

The act of Congress approved March 3, 1857, confirmed to the State of Michigan all selections embraced in the Approved List No. 1 of the Ionia Land District, which were, at the date of said act, vacant and unappropriated, and not interfered with by previous settlement under the laws of the

United States; and the uncontradicted evidence in this case showing that the lands described in the plaintiff's declaration were embraced in such selections and contained in the approved list and plat made by the Secretary of the Interior, and were, on the 3d of March, 1857 vacant, unappropriated and not interfered with by previous settlement under the laws of the United States, were by that act confirmed to the State of Michigan, such act of confirmation operating as a grant of lands embraced in such approved list and plat (Record pp. 287, 288.)

110. In holding that there was no error committed by the trial court in refusing to give plaintiff's request to charge No. 8, which request is as follows:

If such approved list made and approved by the Secretary of the Interior was, on the 3d of March, 1857, withheld from patent because of the resurveys having been ordered or made, and if he had any corrective or other authority over such list to alter and act upon it, then the act of March 3, 1857, applied to such list and confirmed the lands designated therein to the State of Michigan and deprived the Secretary of the Interior of all power in the premises save to cause patents to such lands to be issued to the State of Michigan (Record page 288.)

111. In holding that there was no error committed by the trial court in refusing to give plaintiff's request to charge No. 9, which request is as follows:

The testimony in the case fails to show that there had been any such adjustment of the swamp land grant between the State of Michigan and the United States, as in law deprives the State of the title of the land granted to it under the act of Congress of September 28, 1850, and claimed 1 this suit (Record p. 288).

112. In holding that there was no error committed by the trial court in refusing to give plaintiff's request to charge No. 10, which request is as follows:

The testimony in this case fails to show that there has been any estoppel as against the State to forbid its grantee and those claiming title from the State to rely upon the act of Congress granting the lands involved in the issue in this case to the State (Record p. 288).

113. In holding that there was no error committed by the trial court in refusing to give plaintiff's request to charge No. 11. which request is as follows:

Upon the whole record and the testimony given you in the open court, your verdict should be for the plaintiff (Record, p. 288).

114. In holding that no error was committed by the district judge charging the jury as follows:

"I will say to counsel that, as it lies in my mind, there is no substantial distinction between this case and the first, except that the lands in question are found in an approved list, which was subsequently revoked and canceled by the Secretary of the Interior, and the question that arises upon the power of the Secretary to order the resurvey or revoke any certification of lands made by him before the actual issue of patents. If he had such power, then, of course, the title of the defendants must prevail in this action, and I have no doubt the Secretary had the power not only to order the resurvey as I have held before" (Record p. 288).

115. In holding that no error was committed by the district judge charging the jury as follows:

"But at any time before the issue of patents, if he discovered that there was fraud or mistake, or if he was satisfied upon the evidence before him that the lands were not of the character granted by the act of September 28, 1850, it was his duty, notwithstanding he had certified them to the State by approval of the list, to revoke that certification, cancel it, and the lands remain unaffected. And of course, if the patents had been issued, it was quite probable that this action would have been conclusive on the rights of the parties, that

patent, not having been issued, and the Secretary having decided, as it was his province to decide on the facts before him. that the lands were not of the character granted, I think the title of the defendants must prevail" (Record pp. 288, 289).

116. In holding that no error was committed by the district judge charging the jury as follows:

"With reference to the act of 1857, my impression is very strong. Both from the reading of the act and from what I have seen in the decisions of the Department of the Interior, where the question has arisen once or twice that the act was primarily intended for those selections of land made by the States themselves pursuant to the surveys which they had made, and had no application, at least it wasn't originally intended for and does not apply to those lands designated as swamp lands under the surveys of the United States, and it certainly has no application to those lands, the lists of which were set aside and canceled, and of which a resurvey was ordered by the Secretary of the Interior, and the act of 1857 could not, in my judgment, even if it intended to apply to all the States alike, it could not revive selections which had been so far canceled by the Secretary of the Interior in the line of his duty as to order a resurvey of those lands" (Record p. 289).

117. In holding that no error was committed by the district judge directing a verdict for the defendants, as requested by defendant's counsel (Record p. 289).

118. The Circuit Court of Appeals erred in holding that the Act of Congress of March 3, 1857, did not apply to the list known as Approved List No. 1, Ionia, and did not confirm the selections contained in said list to the State of Michigan (Record p. 344).

119. The Circuit Court of Appeals erred in holding that the Secretary of the Interior had no authority to enter into the arrangement with the State of Michigan to adopt the field-notes of the United States survey on file in the SurveyorGeneral's Office, if by so doing lands the greater part of any government description thereof which were not swamp would be included in such selections (Record p. 340).

120. The Circuit Court of Appeals erred in holding that the Secretary of the Interior could not assume any obligation by agreement with the State which would bind him in the discharge of his duty to the General Government (Record p. 340).

by the act in question the proceedings of his department extended from the first step to be taken for the identification of the lands to the issuance of the patent to the State, whereupon they became subject to the disposal of the legislature thereof, and that when the patent was required by the act it would seem that Congress intended the Secretary's supervision to continue until all things contemplated by the act had been accomplished by its issuance. (Record p. 340, 341).

122. The Circuit Court of Appeals erred in holding "that it was not the intention of this act" (the act of March 3, 1857) "to over-ride the general power of the Secretary of the Interior to correct frauds and mistakes in the preparation of the lists thereby confirmed, and that upon the just construction of the act such frauds and mistakes remain subject to correction" (Record p. 344, 345).

123. The Circuit Court of Appeals erred in holding that the act of March 3, 1857, was not intended to include a list which was in the situation of the one under which the plaintiff claims (Record p. 344).

124. The Circuit Court of Appeals erred in holding that it was not intended by the Secretary of the Interior nor expected by the State that the selection of swamp lands certified and transmitted to the Governor on the 13th day of January, 1854, and which included the lands claimed by the plaintiff, should be necessarily final, but that it was intended to be subject to correction to the extent that the facts shown by the

resurveys should require, and that upon its being proven by the resurveys that these lands were not swamp, it was competent to supersede the selection by a correct one (Record p. 340).

125. The Circuit Court of Appeals erred in holding that in this case the selections had been made and approved under a mistake of facts induced by false and fraudulent surveys, whereby lands had been certified which were not swamp, and to which the State had no right whatever, and the rights of no third party had intervened, it was competent for the Secretary on discovering the error at any time before issuing the patent to correct the wrong by recalling his certification: "not upon mere error of judgment, but that character of mistake which affords a ground of relief in a court of equity" (Record p. 340).

126. The Circuit Court of Appeals erred in holding, "the Secretary under this grant would exercise his powers consistently with his general authority over the public lands. He had plenary and exclusive power to direct the surveys, to cancel such as he found erroneous, and to order resurveys as the necessities of every occasion should require" (Record p. 340).

127. The Circuit Court of Appeals erred in holding that the Secretary of the Interior "had the power and was charged with the duty of supervising the method by which granted lands should be passed to the beneficiary. If mistakes were committed by his subordinates, the results of which, if sufered to stand, would be to accomplish a wrong, he had power to correct them. If they were made by himself, his duty was as plain and his power no less ample" (Record p. 340).

128. The said Circuit Court of Appeals was in error in holding that the grant under the act of September 28, 1850, had been adjusted between the State of Michigan and the United States, and that the State had received substantially all of the lands to which it was entitled (Record p. 336).

129. The Circuit Court of Appeals erred in holding that, "in effect, the plaintiff's contention amounts to this: that no matter how gross the error or from what cause proceeding, the Secretary of the Interior, when once he had certified a list of lands as falling due to the State under the grant, was without power to rectify it though no patent had been issued and the rights of no third party had become involved by purchase from the State, and further that the Secretary had no power to do this with the consent of the State" (Record p. 337.)

130. The Circuit Court of Appeals erred in stating (after setting out the letter of the Commissioner of the General Land Office of date January 13, 1854, to the Governor of Michigan), "in the margin of the descriptions contained in town 18 north, of range 3 west, was written the letter 'F' which was explained in the accompaning certificate to mean that the survey of that township had been reported as fraudulent" (Record p. 333).

No such letter "F" was entered in the margin or any other place upon the Approved List No. 1 transmitted to the Governor.

131. There is also error in this, to-wit: that by the record aforesaid it appears that the judgment aforesaid in form aforesaid was given for the said defendant, Charles A. Rust, survivor, etc., and against the said Michigan Land and Lumber Company, limited, whereas by the law of the land the said judgment ought to have been given for the said Michigan Land and Lumber Company, limited, and against said Charles A. Rust, survivor, etc.

Objections were taken from time to time on the trial of the cause to the reading in evidence of the reports of the General Land Office, State Land Office, and other public documents and records. Inasmuch as the courts will take judicial knowledge of the contents of such documents, and is at liberty, even though they are not formally offered in proof nor avowed in the pleadings, to consult them, counsel do not deem it necessary to specifically rely upon any objection to their admission, and questions relating to the statements contained in them will be disposed of without special reference to them under this head.

> Heath vs. Wallace, 138 U. S., 573, 584. Jones vs. U. S., 137 U. S., 202, 212-216.

QUESTIONS FOR ARGUMENT.

L

The act of Congress of September 28, 1850, granting swamp lands to the several States was a grant in presenti, passing title to the lands as of its date, but requiring identification of the lands to render the title perfect, and the Secretary of the Interior was by the act constituted a special tribunal to whom the determination of the matter was intrusted.

This question is raised by assignments of error 113, 117, and 131.

II.

When the Secretary of the Interior had certified and approved the list of lands known as Ionia List, No. 1 as swamp lands inuring to the State of Michigan, (which list contained the lands in question), and had caused a map to be prepared of the lands so listed and the same had been transmitted to the State, and the Governor having requested patents to issue for the lands included in said list, the identification was complete, and the title of the State to such lands became and was perfect and absolute as of the date of the grant, and the issue of a patent therefor by the United States was not necessary in order to perfect the title to the lands thus identified.

This question is raised by assignments of error 1, 2, 3, 106, 107, 108, 117, 119, 120, 121, 124, 125, 129, 130.

III.

The Secretary of the Interior having identified the lands

to the State of Michigan, as required by the act of September 28, 1850, was thereafter without power to annul, cancel or revoke such action, nor could it be done by his successors, or any other officer of the General Land Office, and he could not by any such attempted acts, withdraw the lands from the operation of the grant.

This question is raised by assignments of error 107, 114, 115, 121, 124, 127, 129, 130.

IV.

The title to the lands in controversy becoming vested in the State by the identification by the Secretary of the Interior, it cannot be divested by any act of the Secretary of the Interior under his authority over the public surveys, and the testimony offered relating to resurveys and the proceedings founded upon them, was immaterial and should have been rejected.

This question is raised by assignments of error noted under the foregoing propositions and assignments 126, 23, 26, 30 to 40, 53, 55 to 67, 73, 80, 82, 84 to 87.

V

The Act of Congress of March 3, 1857, operated to confirm to the State, the title to the lands included in the list Ionia No. 1, and after the date of the act, the duty of the Secretary of the Interior in the premises was the purely ministerial one of issuing approved lists and patents therefor.

This question is raised by assignments of error 109, 110, 116, 118, 122, 123, 125.

VI.

The State is not estopped by its acts or conduct relative to the resurveys within the State or of the lands in controversy and herein of the testimony bearing on resurveys both prior and subsequent to 1850, and the effect of lists of land founded on such resurveys, and further of the effect of the act of March 11, 1861, of the State of Michigan.

This question is raised by assignments of error 4 to 21, 23, 26 to 96, 103 to 105, 114, 116, 121, 122, 123, 124, 126, 111 and 128.

VII.

The tax title acquired by defendant after suit was commenced was not admissible in evidence under the pleadings. This question is raised by assignment of error 97.

VIII.

The files and records relating to the cases of *United States* vs. *Nicholson*, and *United States* vs. *Brevoort* and correspondence relating to the same should have been admitted in evidence.

This question is raised by assignment of error 98 to 102.

ARGUMENT.

· I.

The Act of Congress of September 28, 1850, granting swamp lands to the several States, was a grant in presenti, passing the title to the lands as of its date, but requiring identification of the lands to render the title perfect, and the Secretary of the Interior was by the act constituted a special tribunal to whom the determination of the matter was intrusted.

This proposition is conceded by the Circuit Court of Appeals (Opinion, Record p. 337) and we do not understand it to be seriously disputed by defendant.

Wright vs. Roseberry, 121 U. S., 488, 509.

The second section of the act of September 28, 1850, (9 Statutes at Large, p. 519), makes it "the duty of the Secre-

tary of the Interior as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described," and transmit the same to the Governors of the several States.

The case above cited and the cases there reviewed have determined that this constituted the Secretary a special tribunal for the purpose of identifying the lands inuring to the States under the grant, whose duty it was in the first instance to ascertain the character of the lands as swamp and overflowed, and to furnish the State with the evidence of it, and although the State could not be deprived of its lands by the inaction of of the Secretary of the Interior, yet she "was not obliged to proceed in their assertion in the absence of such identification."

United States vs. Louisiana, 123 U. S., 32, at 37.

The Secretary of the Interior was, as to most of the States, without satisfactory evidence within his control, to eaable him to at once prepare the lists and plats provided for by the act.

> Railroad Company vs. Smith, 9 Wall, 95, at 100. Emigrant Company vs. County of Wright, 97, U. S. 339, at 340. Martin vs. Marks, 97 U. S., 345, at 347.

And he was obliged to resort to various expedients for the purpose of ascertaining the character of the lands granted.

The third section of the act provided: "That in making out a list and plats of the land aforesaid, all legal subdivision the greater part of which is wet and untit for cultivation shall be included in said list and plats; but when the greater part of the subdivision is not of that character, the whole of it shall be excluded therefrom."

What should be the evidence from which to make this fine-

The history of the passage of the act of 1850, as dis-

closed by the Congressional Globe, shows that it was a general notion, that there would be little if any difficulty in determining the lands which would pass to the States under the grant, as it was considered that the words "swamp lands" and "overflowed lands" were somewhat technical terms which were well understood in the General Land Office, and which were used by the Surveyor-General and deputy surveyors in the field notes and plats made under the United States surveys; and the words "made unfit thereby for cultivation" enlarged these terms. The discussions may be found as follows:

The Congressional Globe, 31st Congress, 1st session pages 88, 232, 1191, 1848, 1849, 1999.

The Land Office was consulted at the time and some amendments were made at its suggestion.

A review of the matter is quite fully set forth in executive document number 86 of the Senate, 34th Congress, first session.

Under date of June 15, 1856, in response to a resolution of the Senate of the 7th of May, 1856. Secretary McClelland submitted a report from the Land Office on the subject. On page 3 it is stated. "It was originally believed that the plats of this office afforded sufficient evidence upon which to base the selections under the law. Indeed, the bill as passed by the Senate in the early part of September, 1850, granted only such lands as were designated on the plats of this office as swamp lands. But the law was amended by the committee on public lands of the House of Representatives after communication with this office, and this provision was removed; the law as passed on the 28th of September, 1850, is made to grant, all those swamp and overflowed lands rendered thereby unfit for cultivation," without any restriction as to the source from whence this information is to proceed."

"Careful examination had already demonstrated that the

plats of this office did not afford the evidence requisite to the proper adjustment of the grant, and upon the knowledge of this fact being brought to the attention of Congress, through a letter of the 17th of September, 1850, to Hon. R. W. Johnson, the law was amended so as to embrace other lands than those shown to be swamp by the field notes of survey."

The second section of the act is then referred to, and pointed out that no appropriation was made to carry out the act by an actual survey, and it is then stated: "It was clearly the design of Congress that the selections should be made by the Secretary of the Interior from the field notes and plats of survey, so far as the same should afford the requisite evidence of the character of the lands. But to have attempted the execution of the law upon this basis only, in view of the known incompleteness of those records and of the very general terms in which the grant was made, would have been manifestly unjust to the States designed to be benefited by the law."

"It was therefore decided, after mature deliberation, to enlarge upon the original plan, with a view to the more equitable adjustment of the grant, and as there was no provision to meet the expense of the examination by the United States officers, it was determined that the States should be called upon to furnish the lists of the swamp lands, accompanied by evidence of their character, which should be submitted to the scrutiny of government officials, and which, if satisfactory, should be considered as establishing the claim of the State. Hence, the embodiment in the circular of instructions of November 21, 1850, of the rule that where the field notes of survey indicated the lands to be swamp, they should be so regarded, and that at the same time others might be selected, and proven by the evidence of credible and disinterested witnesses."

The Commissioner in his report for 1850, says "It was decided with your approbation, to charge the Surveyors-General" with the duty of making out the preliminary lists, and

full instructions were issued under date of November 21. 1850.

Extract from report Exhibit 2 Record p. 16. Exhibit 3 and A. Record p. 16-17.

The letter of November 21, 1850, submitted two methods as a basis of determining the lands to which the State was entitled: It could adopt the field notes of the surveys on file in the office of the Surveyor-General as a basis of selection, or it could furnish to the Surveyor-General other satisfactory evidence that the lands were of the character granted by the act. The Land Office considered the field notes to be "the only reliable data" in its possession from which the lists could be made out (Exhibit 3A, p. 18). The method offered of having the Surveyor-General prepare lists from the field notes had been recognized by Congress in its grant of swamp lands to the State of Louisiana in 1849.

9 Statutes at Large, 352.

The Governor received a copy of the instructions of the Commissioner of the General Land Office to the Surveyor-General from both the Commissioner and the Surveyor-General, and entered into correspondence with the Surveyor-General as to which in his opinion would be deemed the better method for the interests of the State.

Butterfield, C. G. L. O., to Governor, November 21, 1850, Exhibit 3, p. 16.

Noble, S. G., to Governor, December 6, 1850, Exhibit 4, p. 19.

Governor to Noble, S. G., December 20, 1850, Exhibit 5, p. 19.

Noble, S. G., to Governor, January 3, 1851, Exhibit 6, p. 20.

The Governor submitted the matter to the Legislature of 1851 by his annual message, an extract of which is given in the Record (Exhibit 7, p. 21), and the Legislature by its act approved June 28, 1851, enacted, "That they adopt the notes of the surveys on file in the Surveyor-General's office as the basis upon which they will receive the swamp lands granted to the State by Act of Congress, September 28, 1850."

Laws of Michigan of 1851, p. 322, Appendix Number One.

It is submitted that it was entirely competent for the Secretary of the Interior as being the person, or the special tribunal which must determine the character of the lands, to indicate to the State the character of the proof which would be accepted as satisfactory. This is practically conceded by the Circuit Court of Appeals. (Opinion, Record, p. 337.)

The election to adopt the field notes as the basis of selection, has been acted upon continuously from that time to the present, and has been constantly recognized by the land department in its decisions as to other States as well as the State of Michigan.

Noble, S. G., to Butterfield, C. G. L. O., June 18, 1851, Exhibit 10, p. 23.

Wilson, C. G. L. O., to Goodrich, April 25, 1855, Exhibit 19, p. 28.

Hendricks, C. G. L. O., to Goodrich, December 13, 1855, Exhibit 20, p. 28.

Hendricks, C. G. L. O., to Governor Bingham, December 13, 1855, Exhibit 21, p. 29.

Wilson, C. G. L. O., to Governor, May 21, 1860, Exhibit 22, p. 30.

Hendricks, C. G. L. O., to Treadwell, C. S. L. O., December 22, 1858, Exhibit 23, p. 31.

Drummond, C. G. L. O., to Edmonds, C. S. L. O., December 27, 1871, Exhibit 24, p. 34.

Williamson, C. G. L. O., to Reg. and Rec., September 6, 1877, Exhibit 25, p. 34.

Lester's Land Laws, Vol. 1, pp. 553, 571.

Kirkwood, Sec., to McFarland, Commissioner, 1 L. D. Dec., 514.

Ohio Swamp Grant, 3 L. D. Dec., 390.

Cushing vs. State of Michigan, 4 L. D. Dec., 415.

Secretary McClelland. July 7, 1855, in a letter to the Commissioner, says, in speaking of the due proof required where selections were made under the swamp land grant by the State, and of the unreliability of such selections: "This principle is not to be regarded as extending to land shown by the field notes to be swampy, your office having, it is understood, regarded such indications as conclusive" (1 Lester, 552).

And again, on October 4, 1855 (1 Lester, 553), he said. with reference to selections in Wisconsin, which State had adopted the field notes as a basis: "Your office has decided, upon the principle early adopted in reference to these selections, and applied, it is believed, in all the States to which the grant of these swamp lands extended, that the field notes of survey were to be regarded as conclusive upon the subject. and the department feeling no disposition to change this principle, nor interfere with the various cases already determined upon its basis, confirms the action had by you in this particular case, especially, as in the case in the same State to which you refer in your letter, the action recommended therein by your office, was adopted by the department, with a full knowledge that it was thereby sanctioning this principle, and in effect deciding the very question now specially presented in Mr. Winan's appeal." Mr. Winan's appeal was based upon the proposition that the lands were not, in fact, swamp.

Commissioner Hendricks, in a communication to the Secretary of the Interior, January 22, 1858 (1 Lester, 559), in answer to an inquiry made by the Secretary of the Interior, which desired him to report whether in his opinion in bringing to a close the grant of September 28, 1850, in cases of selections reported to his office since the 3d of March, 1857, and in cases where the selections yet remained to be made, the general instructions of November, 1850, were sufficient and should be adhered to, or should new or additional regulations be adopted, stated that in a communication made to the

Governor of Arkansas with reference to the swamp land selections, it was stated: "In all cases where the plats and field notes represent the lands as swampy, or subject to such overflow as to render them unfit for cultivation, they belong to the State, under the law, and will be so certified. If said records clearly indicate the swampy character of lands. then they are incontrovertible, and your certificate of approval is based thereon." He further said that, "It should be observed that in the States of Michigan and Wisconsin the field notes of the surveys were adopted by the authorities as the basis upon which they would accept the grant; and the action of the Surveyors-General of those districts is confined to the indications expressed in the field notes. In view, therefore, of the very clear and definite character of the explanatory instructions above, and further, that the authorities of the States affected by the grant have made no objections to the instructions, I cannot perceive that any additional instructions and regulations are required. Nor does the act of 3d March. 1857, present to me any particulars requiring a departure, or any necessity for additional instructions to be issued to those already established, relating to the selections made and reported to this office since the passage of that act, or to those remaining to be made."

Secretary Thompson, to the Commissioner, August 1, 1859 (1 Lester, 571), speaking with reference to the claims made by the State of Wisconsin to be allowed to survey swamps not shown to be such by the field notes of the United States survey, is quite suggestive with reference to the question under consideration. He points out the objections to such a course, and the inevitable result which would ensue, viz., delay in administering the grant, dissatisfaction and litigation among the citizens of the State, and appeals to the Legislature for relief and damages, and states: "A second consideration is this: our predecessors in office, both on the part of the State and the United States, in view of all the facts ex-

isting at the time, concluded that the method of adjustment adopted was the most just and fair, and dictated by the best interests of Wisconsin. As I view the matter, they stood in just the same relation to the subject as we do; and I should hesitate to adopt any other plan than the one entered upon by them, even if my opinion did not agree with that which What rendered their action peculiarly they entertained. appropriate was the consideration of the fact, that the best knowledge which Congress possessed in 1850, of the swamp and overflowed lands unfit for cultivation surveyed and then remaining unsold, may be presumed to have been derived from those official records, the field notes of survey; and the tracts thereby shown to be unfit for cultivation at that time, may be regarded as those which, especially. Congress intended to grant. * * * As it thus appears that the plan of administering the swamp grant in Wisconsin was fully indorsed by the State officers at its inception as just and beneficial: as no serious complaint has arisen during a period of nearly nine years, and as its present and future operation are not the subject of any complaint. I think we have a very strong case against a change. It may be regarded as a matter of congratulation that the plan which was adopted has worked so well, and with such concurrent satisfaction to the officers of the State and the United States, thus indicating its wisdom and fairness, and exhibiting a history so creditable to its merits that we could not hope to make a change for the better by the substitution of any other."

On November 21, 1885, 4 L. Dec., 52, Commissioner Sparks, in a letter addressed to Hon. Van H. Manning, said: "The rule enforced from the beginning has been that a State having elected to take swamp lands by field notes and plats of survey, is bound by them, as is also the government." That decision was affirmed by the Secretary of the Interior on May 12, 1886.

For a period of thirty-five years from the passage of the

act, the rules had been uniform. But in 1886 a qualification was engrafted upon this principle by Secretary Lamar, upon what reason or upon what ground it is difficult to perceive, that while such field notes were binding and conclusive as against the State, they were not as against the United States.

On August 25, 1888, Secretary Vilas, in his decision with reference to the "middle ground," which contention arose in Michigan, used this language: "A special agreement has been made with Michigan, as with some other States, whereby the field notes of the government survey are to be conclusively taken as the basis of determination of swamp and overflowed land in that State, and of the adjustment under the grant." (7 L. Dec. 256.)

Secretary Vilas applied the rule again on August 20, 1888, (7 L. Dec. 243), under the indemnity act of March 2, 1855, in which he ruled against the claim of the State of Michigan, on the ground that the basis of adjustment of the swamp land grant (citing 1 Lester, 542), are the field notes of survey, and that those showed that the lands claimed for indemnity were not swamp lands within the true intent and meaning of the act.

Secretary Noble, on the 20th of September, 1889 (9 L. Dec., 386), passing upon a claim made by the State of Wisconsin, said with reference to this rule to ascertain what legal subdivisions are swamp from the field notes: "When the field notes are the basis, and the intersections of the lines of swamp or overflow with those of the public surveys alone are given, those intersections may be connected by straight lines, and all legal subdivisions, the greater part of which are shown by those lines to be within the swamp or overflow, will be certified to the State: the balance will remain the property of the government."

Assistant Secretary Chandler, on August 5, 1891, (13 L. Dec., 129-130) said: "The department has repeatedly held that where a tract of land has been returned as swamp by the

Surveyor-General, the question of the character of the land cannot be raised, as under the law the land inures to the State. * * * The representation of the lands as swamp, and overflowed on the approved township plat, would be conclusive as against the United States that they were such lands if they had not been patented before the return of the township plat to the Land Office."

In a letter from the Acting Secretary of the Interior, in response to Senate resolution of February 28, 1887, relative to the authority for patenting swamp lands to the State, 50th Congress, first session, printed as executive document No. 55, the Acting Secretary inclosed a report made to him from the Commissioner of the General Land Office containing the information asked for. Upon page 9 of this document, it is stated: "A State having elected to take swamp lands by field notes and plats of survey, is bound by them, as is also the government. See Secretary's decisions: October 4, 1855 (1 Lester's Land Laws, 533); August 1, 1859 (id., 571); December 4, 1877 (4 Copp's L. O., 149); and September 19, 1879."

This court has recognized the use of the field notes as a proper basis of determining the character of the land, both as to the swamp land grant and other grants.

> Martin vs. Marks, 97 U. S., 345. United States vs. Louisiana, 123 U. S., 32, at 37. Mortun vs. Nebraska, 21 Wall., 660, at 674. Wright vs. Roseberry, 124 U. S., 502, 503.

> > II.

THE TITLE OF THE STATE TO THE LAND GRANTED BY THE ACT OF SEPTEMBER 28, 1850. BECAME PERFECTED BY THE IDENTIFICATION BY THE SECRETARY OF THE INTERIOR IN APPROVING THE LIST IONIA NUMBER ONE, AND MAKING THE PLAT OF THE LAND EMBRACED IN SAID LIST AND TRANSMITTING THE SAME TO THE GOVERNOR OF MICHIGAN.

This was final action, and closed the proceedings so far as it concerned the Department of the Interior as fully as if a patent had actually issued for the several parcels of land.

United States vs. Arredondo, 6 Pet, 729, 730. United States vs. Throckmorton, 98 U. S. 61. Vance vs. Burbank, 101 U. S., 519. United States vs. Land Company, 148 U. S., 43. French vs. Fyan, 93 U. S. 171. Tubbs vs. Wilhoit, 138 U. S. 146. United States vs. Schurz, 102 U. S., 401, 402. Butterworth vs. Hoe, 112 U. S. 68. Fore vs. Williams, 35 Miss., 533 (1858.) Busch vs. Donohue, 31 Mich., 481 (1875.) Masterson vs. Marshall, 65 Mo., 94-99 (1877.) Bristol vs. Carroll County, 95 Ill., 84, 85 (1880.) Hendry vs. Willis, 33 Ark. 833-837 (1878.)

THE ISSUING OF THE PATENT ON REQUEST OF THE GOVERNOR WAS MERELY MINISTERIAL, AND ADDED NOTHING TO THE TITLE ALREADY VESTED IN THE STATE.

United States vs. Stone, 2 Wall, 535. United States vs. Schurz, 102 U. S, 401-2. Butterworth vs. Hoe, 112 U. S, 68.

The historic sequence of events should be considered. Township 18 north, range 3 west, was originally surveyed in the first quarter of the year 1839, by Henry Nicholson, under a contract dated July 28, 1838. This township was not among the eighty townships which the State of Michigan had requested to be resurveyed. Mr. Burt reported this survey as "bad throughout," in his report to the Surveyor-General, (Record page 95.) who reported it to the Commissioner of the General Land Office, under date of November 5, 1849. Suit was commenced November 12, 1849, against Nicholson and his bondsmen for not surveying this township, among others, in accordance with his contract and the law, which terminated

in favor of Nicholson, November 25, 1850 (Record 259-264.) September 28, 1850, the grant of swamp land was made by Congress. That act devolved the duty of identifying the land granted upon the Secretary of the Interior, as already shown. The act contemplated that the lands were then, or should be, surveyed by the United States, for it refers to the legal subdivisions. In Michigan there had been surveyed up to September 30, 1850, 30,629,076 acres, leaving unsurveyed at that date 5.366,444 acres (Report of Commissioner, General Land Office, 1850, (Record, p. 100.) The State having acted on the offer of the Secretary of the Interior contained in the circular of November 21, 1850, and adopted the field notes as the basis of identification, the Surveyor-General, under instructions of November 21, 1850, proceeded to make out lists of the lands, which would pass to the State of Michigan under the grant from the plats of the surveys of the several townships, designating thereon the legal subdivisions by the letter "S" (see plat Record p. 46.) Among other lists reported by him to the General Land Office was that known as the Surveyor-General's List No. 1, in the Grand River land district. This list embraced with other lands, the lands which were at the General Land Office, put into a list » called Approved List Ionia. No. 1. The latter list so prepared at Washington, was submitted to the Secretary of the Interior, and by him approved on the 27th day of October, 1853, and the plat thereof was made in the Land Department at Washington, duly certified by the Commissioner of the General Land Office. The list so approved and the plat were transmitted to the Governor of the State of Michigan on the 13th day of January, 1854, and 13th day of March. 1854, respectively. On the 31st day of January, 1854, the Governor acknowledged the receipt of the list and requested patents to be issued to the State of Michigan therefor (see Exhibits 15 and 16 p. 26. Exhibit 112 p. 159. Exhibit 29 p. 37). Everything which affected the character of the lands as being

included within the terms of the grant or not, whether as to their character as being swamp or otherwise, or whether the surveys thereof had been fraudulent, defective or erroneous, were necessarily before the Secretary of the Interior when he passed upon the question as to whether or not these lands, so approved by him, were the lands granted by Congress under the act aforesaid.

The questions which the Secretary of the Interior must necessarily have acted upon when the list was presented for his approval were: (1.) Is the land embraced in the list of the character described in the grant? (2.) Has it been established by the evidence on file in the land department that the surveys of the townships included in the list are fraudulent, or so defective, as to cause the Secretary either to reject the list in whole or in part or to suspend action upon it? (3.) Did the land included in the list remain unsold at the date of the passage of the act?

The character of the surveys had been chalenged as fraudulent, erroneous and defective. The report of the Survevor-General (Exhibits 73 and 74.) pp. 88, 96, dated July 10, 1849, inclosing therein the report of William A. Burt * (page 95); the letter of Moses Kelly, of date February 14, 1851, a clerk in the General Land Office. Exhibit 75 (page 96); the report of the Commissioner of the General Land Office for the year of 1850, made to the Secretary of the Interior, Exhibit 76 (page 100): report of the Surveyor-General, of date March 5, 1851. Exhibit 77 (page 103); the report of the Commissioner of the General Land Office for the year 1851. Exhibit 78 (page 105); the letter of the Surveyor-General to the Commissioner of the General Land Office, dated February 10, 1852, Exhibit 79 (page 107); the report of A. S. Wadsworth, Deputy Surveyor, to the Surveyor-General, of date December 24, 1851 (page 110); the letter of the Commissioner of the General Land Office to the Survevor-General, dated March 8, 1852, Exhibit 80 (page 112);

the report of the Commissioner of the General Land Office and Surveyor-General for the year 1852, Exhibit 81 (page 113); various appropriations made by Congress for resurveys in several States of the Union, including Michigan-all these allegations and the testimony concerning them, was before the Secretary of the Interior when he had before him the list lonia No. 1, and was called upon to approve, reject, or suspend such list, or any portion thereof, as he should determine. He approved the list, thus identifying the land that passed, so far as such list was concerned, to the State of Michigan. The plat thereof completed the evidence of identification, and both were, as before stated, transmitted to the Governor, Upon such approval, the questions of fraud and error were at once and forever settled. The whole question was passed upon, and closed. It cannot be successfully asserted that the approval of the Secretary of the Interior was obtained or induced by the fraud of any person acting for or representing the State of Michigan, nor, indeed, by the fraud of any person representing the United States or its land department. Whatever of fraud was either charged or asserted to exist with reference to the surveys of the township in question. was then within the knowledge of the Secretary of the Interior at the time of the approval, and such approval was a negation as to the existence, in fact, of such fraud or error, or, at least, it was not of sufficient importance to affect the character of the lands embraced in the list under the agreement with the State of Michigan with reference to the mode of selection. The resurveys, under the claim of fraud in the old surveys, were not a new thing in the Land Department at Washing-Eighty townships had already been resurveyed at the request of the State of Michigan, and the land department had at that time had the opportunity of comparing the two surveys and judging of the extent of such claims of fraud or error. No other claims or charges of fraud have ever been alleged since the approval that did not exist at that time, and

were at that time on file in the department and embodied in letters and reports of the Surveyor-General to the Commissioner of the General Land Office, and from him to the Secretary of the Interior. He was fully advised, and when he determined by his approval that the list called Ionia No. 1 was the particular land which passed to the State of Michigan under the act of September 28, 1850, he passed upon and concluded all questions of fraud in the original survey, from which the Surveyor-General's list had been prepared, so far as the lands listed by the Surveyor-General were included within such approved list.

It is stated in French vs. Fyan, 93 U. S. 169, after referring to the second section of the act (page 171), "We are of the opinion that this section devolved upon the Secretary, as the head of the department which administered the affairs of the public lands, the duty, and conferred on him the power, of determining what lands were of the description granted by that act, and made his office the tribunal whose decision on that subject was to be controlling."

The second section of the act provides, "That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the Governor of the State of Arkansas, and at the request of said Governor cause a patent to be issued to the State therefor."

It is clear that there are two sets of acts to be performed by the Secretary: First, he is to make out a list and plats of the lands; second, he is to *cause* patents to issue. The question therefore presented is, which of these actions constitute the identification, or are both acts parts of the same process? Which of the duties pertain or belong solely to his duty as a special tribunal?

The two acts are of an entirely different character. The preparation of the lists and plats involves the use of discretion, deliberation and judgment by the Secretary, an exercise of judicial functions. The rules under which this duty is performed are set forth in the third section of the act, which prescribed that, "all legal subdivisions, the greater part of which is wet and untit for cultivation, shall be included in said list and plats."

The distinctive character of the second duty is not disclosed by the act of 1850, the only instruction on the subject is that the Secretary shall cause patents to issue. Cause patents to be issued by whom? Cause patents to be issued in what manner? Was any coercive authority by this phase granted to the Secretary? Was the Secretary granted power to issue the patent himself? None of these questions are answered by the statute. Had it been the intention of Congress to grant any special authority to the Secretary in this particular, it would have been expressly stated in the act; not being so stated, on familiar principles, we must conclude that the Secretary was not given any authority to coerce another department or to issue the patent himself, and must look elsewhere for a definition of his duty.

When this act was passed, there existed on the statute books, provisions under which patents were issued for lands sold or granted by the United States. These are found in the revised statutes, substantially as they stood in 1850, and are as follows:

Section 450 provides that the President may appoint a Secretary, "whose duty it shall be, under the direction of the president, to sign his name, and for him, all patents, for *land sold or granted* under the authority of the United States."

Section 453 provides that the Commissioner of the General Land Office should perform, under the direction of the Secretary of the Interior, all executive duties appertaining to the survey, etc., of the public lands, "and the issuing of patents for all grants of land under the authority of the government."

Section 454 intrusted the custody of the seal to the Commissioner of the General Land Office.

Section 458 provides that "all patents issuing from the General Land Office shall be issued in the name of the United States, and be signed by the President and countersigned by the Recorder of the General Land Office, and shall be recorded in the office in books to be kept for that purpose."

Section 459 makes it the duty of the Recorder, under instructions of the Commissioner, to affix the seal of the office to patents for public lands, and to attend to the recording and transmission of the same.

It is manifest that the word *cause*, which defines the duty of the Secretary as to the issue of patents, simply means that the patents provided for were to issue in the usual manner, that is, under the statutes above stated.

It is also manifest that as to this duty, the Secretary was not given any new authority in the premises, nor did his acts involve any act of discretion, deliberation or judgment by him. The procedure, so far as his office was concerned, was purely ministerial, that is the manual preparation of the patent, the affixing of the seal, and the recording of the instrument in the records of the General Land Office.

Stoddard vs. Chambers, 2 How., 284, 318. United States vs. Stone, 2 Wall., 525, 535.

The execution of the patent was a duty of the President and not the Secretary. The purpose of affixing the seal, and the signature by the Recorder, was for verification of the instrument. We hardly speak of a body or person being a tribunal unless it has some authority to exercise its own discretion, deliberate upon the matter, and then render its judgment; and so far as issuing the patent is concerned, all of these elements are wanting.

The patent under the United States laws, always presumes a previous determination of the right to it, and this is true whatever be the purpose of the patent; it may, or may not be, the sole record or evidence of the judgment or determination previously made.

Under the congressional legislation, a patent has a double purpose. It may be a conveyance of title, or it may be merely evidence of a title already passed. In the present instance, the title had already passed by virtue of the act itself, and the sole purpose of the patent issued was as a mere evidence of that title. This dual nature of a patent has been frequently recognized by the supreme court.

In Langdeau vs. Hanes, 21 Wall 521, the title of certain French and Canadian inhabitants had been confirmed under acts of Congress of 1804 and 1807, which acts provided for the issue of a patent under this confirmation, and the patent was not, in fact, issued until 1872. On page 529 Justice Field stated, "In the legislation of Congress, a patent has a double operation. It is a conveyance by the government, when the government has any interest to convey, but where it is issued upon the confirmation of a claim of a previously existing title, it is documentary evidence, having the dignity of a record of the existence of that title, or of such equities respecting the claim as justify its recognition and confirma-In the present case the patent would have been of great value to the claimants as record evidence of the ancient possession and title of their ancestor, and of the recognition and confirmation by the United States. * * But it would have added nothing to the force of the confirmation."

In Morrow vs. Whitney, 95 U. S. 551, a similar case was presented: at page 555, it was said. In this case the patent would have been of great value to the claimant. It would have enabled him without other proof, to maintain his title in the tribunals of the country. * * It would thus have proved to its possessor an instrument of quiet and security,

but it would not have added anything to the interest vested by the confirmation."

A case more nearly analogous is that of the Railroad Company vs. Price County, 133 U. S. 496. This was a railroad grant in the State of Wisconsin, under which a title passed by virtue of the act itself, it being a grant in presenti the same as the swamp grant; the act also provided for the issue of a patent to the railroad company, as it completed successive sections of the road for the land co-terminus with the sections thus completed. After showing that when the route of the road was definitely fixed, the sections of the lands granted became susceptible of indentification, and the title attached thereto, the court held at page 510, "It had then, to the eleven forty-acre parcels which were capable of identification an indefeasible right or title: it matters not which term we used. The subsequent issue of a patent by the United States was not essential to the right of the company to those parcels. although, in many respects, they would have been of great service to it. They would have served to identify the lands as co-terminus with the road completed; they would have been evidence that the grantee had complied with the conditions of the grant, and to that extent that the grant was relieved of possibility of forfeiture for breach of them; they would have obviated the necessity of any other evidence of the grantees' right to the lands; and they would have been evidence that the lands were subject to the disposal of the railroad company with the consent of the government. They would have been, in these respects, deeds of further assurance of the patentees title, and, therefore, a source of quiet and peace to it in its possessions."

Even where the patent operates as a conveyance, the title may attach by the previous decision or determination of the person or body having the authority, which cannot be defeated by the mere withholding of the patent by the officers of the General Land Office nor by any attempt to pass the title to someone else. And this right, resting as it does on this prior decision or determination, will be protected and enforced by the courts. This has long been recognized.

In Lytle vs. Arkansas, 9 How. 314, the right of the preemption claimant over a subsequent grant to the State of Arkansas was in controversy. The pre-emptioner had complied with the law under which his entry was made, so far as it lay in his power to do so, and the court held, page 333, "The register and receiver were constituted by the act of a tribunal to determine the rights of those who claimed preemptions under it. From their decision no appeal was given, If, therefore, they acted within their powers as sanctioned by the Commissioner, and within the law, and the decision cannot be impeached on the ground of fraud or unfairness, it must be considered final. * * * It is a well established principle, that where an indivdual in the prosecution of a right does everything which the law requires him to do, and he fails to attain his right by the misconduct or neglect of a public officer, the law will protect him."

In Stark vs. Starrs, 6 Wall, 402. Stark claimed under the "donation act," while the Starrs claimed under the "town site act." which did not become operative in Oregon until after the donation act. The court held, "Before the passage of this act (the act making the town site laws applicable to Oregon), the claim of the defendant Stark, had been surveyed. and the required proof of his settlement and continued occupation and residence made, and such steps had been taken as to perfect his right to the patent. The lands embraced by his claim had then ceased to be the subject of purchase from the United States by any person, natural or artificial. The right to the patent once vested is treated by the government, when dealing with public lands, as equivalent to a patent issued. When, in fact, the patent does issue, it relates back to the inception of the right of the patentee, so far as it may be necessary, to cut off intervening claimants."

In Witherspoon vs. Duncan. 4 Wall, 210, the westion arose as to the right of the purchaser, who held merely his certificate issued by the receiver of the local office, and had no patent, and it was held, page 218, "The contract of purchase is complete when the certificate of entry is executed and delivered, and thereafter the lands ceased to be a part of the public domain. The government agrees to make proper conveyances as soon as it can, and in the meantime holds the naked legal title in trust for the purchaser who has the equitable title."

In Cornelius vs. Kessel, 128 U. S. 456, the power of the Commissioner of the General Land Office to cancel an entry and issue a patent to another was involved, and after examining the powers of the Commissioner, and his right of supervision, it was held, page 461, "but the power of supervision and correction is not an unlimited or an arbitrary power. It can be exerted only when the entry upon false testimony, or without authority of law, it cannot be exercised so as to deprive any person of land lawfully entered and paid for? By such entry and payment the purchaser secures a vested interest in the property, and a right to the patent therefor, and can no more be deprived of it by order of the Commissioner than he can be deprived by such order of an other lawfully acquired property. And attempted deprivation in that way of such interest will be corrected whenever the matter is presented so that the judiciary can act upon it."

Again, on page 463, referring to the order of the Commissioner in the case, it was held, "That order was illegally made, and those claiming under him can stand upon the original entry and are not obliged to invoke the subsequent re-instatement of the entry by the Commissioner."

As bearing on the same subject, the following are in point:

Meyers vs Croft, 13 Wall 291. Wirth vs. Branson, 98 U. S. 118-121. U. S. vs. Hughes, How. 552. Carrol vs. Safford, 3 How. 441-460. Deffebeck vs. Hawke, 115 U. S. 392-405. Simmons vs. Wagner, 101 U. S. 260. The same distinction was applied in a case of a patent for an invention.

Butterworth vs. Hoc. 112 U. S. 50, this was an application for a mandamus to compel the Commissioner of Patents to issue a patent and it was held, page 68, "Some question is made as to the remedy. We think however, that mandamus will lie, and that it was properly directed to the Commissioner of Patents. He had fully exercised his judgment and discretion when he decided that the relators were entitled to the patent. The duty to prepare it, to lay it before the Secretary for his signature, and to countersign it, were all that remained, and they were all purely ministerial."

It is manifest, therefore, that this duty to cause a patent to issue is purely ministerial in its character and can only take place when the identification, the act requiring deliberation and judgment has first been had. The duty, therefore, which was conferred upon the Secretary and in relation to which he was a special tribunal, was the making up the lists and plats of the lands described by the act, applying the rule as it is given in the third section of the act. What was the final act of that tribunal, which was the authority for the exercise of the ministerial duty of issuing the patent?

The act itself lays down the rule. The last act which required any act of discretion, deliberation or judgment, was when he attached his signature of approval to the lists and to the plats. Up to that time he is presumed to have deliberated upon the questions involved in a determination of the character of the parcels presented to him; to have heard the evidences: to have examined it; to have applied the rule given in the third section of the act of 1850, and he announced his judgment by attaching his signature to the certificate of approval.

The situation is in all substantial respects analogous to that set forth in *Marbury vs. Madison*, I Cranch, 137. The distinction between the act of appointment, which involved

the exercise of discretion and deliberation, and the issuing of a commission, which was ministerial, is discussed at some length by Chief Justice Marshall, and after determining that there is a clear distinction, he says, page 156. "It follows, too. from the existence of this distinction, that if an appointment was to be evidenced by any public act, other than the commission, the performance of such public act would create the officer; and if he was not removable at the will of the president, would either give him a right to the commission or enable him to perform the duties without it." After some discussion, the chief justice proceeds, "Should the commission, instead of being an evidence of appointment, even be considered as constituting the appointment itself; still it would be made when the last act to be done by the president was performed, or at furthest, when the commission was complete. The last act to be done by the president is the signature of the commission, he has then acted on the advice and consent of the Senate to his own nomination. The time for deliberation has then passed. He has decided. His judgment, on the advice and consent of the Senate concurring with his nomination has been made, and the officer is appointed. This appointment is evidenced by an open, unequivocal act; and being the last act required from the person making it, necessarily excludes the idea of its being, so far as respects the appointment, an inchoate and incomplete transaction. Some point of time must be taken when the power of the executive over an officer not removable at his will must cease. That point of time must be when the constitutional power of appointment has been exercised. And this power has been exercised when the last act required from the person possessing the power has been performed. The last act is the signature of the commission."

The chief justice proceeding demonstrates the ministerial character of the duty of the Secretary of State, which is exactly the duty of the Secretary of the Interior in this case, namely, to affix the seal and record the document, and makes a very apt illustration, by reference to the issue of a patent under certain of the land laws. He said, page 165, "By the act passed in 1796, authorizing the sale of the lands above the mouth of the Kentucky River the purchaser, on paying his purchase money, becomes completely entitled to the property purchased, and on producing to the Secretary of State the receipt of the treasurer upon a certificate required by the law, the President of the United States is authorized to grant him a patent. It is further enacted that all patents shall be countersigned by the Secretary of State, and recorded in his office. If the Secretary of State should choose to withhold this patent or the patent being lost, should refuse a copy of it, can it be imagined that the law furnished to the injured person no remedy? It is not believed that any person whatever would attempt to maintain such a proposition."

Another case analogous in its facts as to the character of the duties to be performed, is that of *Butterworth* vs. *Hoc*, 112, U. S. 50, 68, an extract from which is given above.

Whenever the question has been presented to the courts the view of the matter expressed above has uniformly been upheld.

In Wright vs. Roscherry, 121. U. S. 488, at page 500, Justice Field used this language, "It is plain that the difficulty of identifying the swamp and overflowed lands could not defeat or impair the effect of the granting clause, by whosoever such identification was required to be made. When identified the title would become perfect as of the date of the Act. The patent would be evidence of such identification, and declaratory of the title conveyed.

Similar language used in Busche vs. Donohue, 31, Mich., 487-4481

In other words, that the grant to the State made in presenti by the act of 1850, had been made definite and certain in its application to particular parcels granted, by the lists which described and pointed them out. A subsequent patent might be convenient as an evidence of title, but it could not be necessary for the act itself, when the lands were properly identified, was as effectual to transfer the title as any instrument it was in the power of the government to give."

The same views have been announced by the highest courts of several of the States receiving swamp lands, where the question has arisen.

Hemstead vs. Underhill, 20 Ark. 337 at 346. "The practice under the act of Congress has been for a State to select such lands as were supposed to be within the grant, and when the lists of lands selected by her officers, and returned to the General Land Office of the United States, were approved by the Secretary of the Interior, the lands selected were said to be confirmed to the State. Such was the process of ascertaining what particular lands were embraced by the grant, carried on by the mutual consent of the two governments. "In Hendry vs. Willis, 33 Ark, 833, the question as to the effect of a list approved by the Secretary of the Interior was squarely raised. The plaintiff relied for the evidence that his land was swamp land, upon a list which has been approved by the Secretary of the Interior. The court said: "When these lists, so approved, have been transmitted to the Governor, they have been treated in our legislative and official acts as confirmed, and so we must understand the word." Page 836. "It follows al o. from the authority given to the Secretary of the Interior under the act, that after confirmation of the lands by him to the State, the character of the lands, as swamp and overflowed, would be conclusively fixed as against the United States, or any one holding under it by patent after confirmation."

Masterson vs. Marshall, 65 Mo. 94, the plaintiff claimed title by virtue of a pre-emption location made at the United States Land Office, in 1856, and the defendant claimed title

under the county of Carroll: this title being deduced from the State as swamp lands, the lands having been listed and approved by the Secretary in 1854, but a patent was not issued until 1858, or about two years after the location made at the United States Land Office. It is said: That where in any given case the particular tracts constitute a portion of the subject matter of the grant contemplated by the act of 1850. has been authoritatively ascertained, the grant at once takes effect as to the portion so designated and the title thereto vests in the State without a patent. * * * Lists of such lands selected by State authority, when approved by the Secretary of the Interior and reported to and accepted by the Governor, are clearly sufficient to complete the grant and vest the title. Such lists were made in the present case, and the title to the lands in controversy was therefore vested in the present case, and the title to the lands in controversy was therefore vested in the State at the time of the location and settlement made by the plaintiff in 1856, although no patent had then issued to the State."

Fore vs. Williams, 35 Miss, page 533, after determining that no patent was necessary to convey the land to the State. the question presented was whether the land in controversy had been sufficiently located to make it the subject of the grant to the State. The plaintiff claimed under a patent issued from the United States Land Office. The list of lands had been approved by the Secretary of the Interior, but it did not appear that they had been forwarded to the Governor, but lists approved had been previously approved by the Governor, and the Secretary of the Interior returned them to the local land office where they had been on file, and were there at the time the action was instituted. The court held that, "Under such circumstances, the United States could not be heard to say, that its officer had not performed his duty. according to the form of the Act of Congress, and to found any right upon such ground."

Daniel vs. Purvis, 50, Miss. 261. the plaintiff claimed, under a patent issued on a location at the United States Land Office in March, 1859, and defendant claimed the land as swamp lands, and based his title upon an approved list made in December, 1856. The court said, "The designation of a list and plat approved by the Secretary of the Interior was to identify the land. The title passed to the State, by virtue of the grant in the act of 1850; and list and plat served to identify the subject of the grant."

Bristol vs. Carroll County, 95 Ill. 84, plaintiff showed his title under the swamp land grant by exhibiting an approved list made by the Secretary of the Interior, and defendant claimed under a patent issued by the United States subsequent to the certification by the Secretary of the Interior. It was held: "It was not necessary, as suggested by appellants, to show that the lands were in fact swamp and overflowed lands. It was enough that they were found included in the list of swamp and overflowed lands which the Commissioner of the General Land Office transmitted to the Governor as such. The Act of Congress conferred upon the Secretary of the Interior, the power of determining what lands were of the description granted by that act, and the decision of his office on that subject is controlling. French vs. Fyan, 93 U. S. 169."

There have been a number of opinions by the Officers of the Land Department in relation to this matter, which are strictly in line with the authorities above cited.

1, Lester's Land Laws, 554, 557, 562, 564 and 570.

The case of Barden vs. Northern Pacific Railroad Company, 154 U. S., 288, is not in conflict with the views above expressed. This was a grant in presenti to the railroad company of "every alternate section of public lands not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line." The fourth section provided that upon the completion of sec-

tions of the road of 25 miles each the same were to be examined by three Commissioners, to be appointed by the President, and if they reported the road completed in accordance with the act, "patents of lands as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and co-terminus with said completed section of said road." The lands in controversy were within the forty-mile or "place" limits of the line of road as located. There was no provision for the listing of the lands, but the railroad company had caused a list to be prepared which included the lands in question, and filed it with the District Land Office in Montana, and the same was approved by the Register and Receiver and forwarded to the Commissioner of the Land Office in 1868, and had ever since remained there. In 1888, veins of gold and silver were discovered under property which were located by Barden and others, who went into possession, and the action is brought by the railroad company to recover possession of the property. Justice Field renders the opinion and on page 313, calls attention to the effect of a definite location of the road, "the ascertainment of the location of the sections in no respect affected the nature of the lands or the conditions on which their grant was made. If swamp lands, timber lands or mineral lands, previously, they continue so afterwards."

"It is also true that the grant was one *in presenti* of lands to be afterwards located * * * But it was still, as such grant, subject to the exception of mineral lands made at its date or then excluded therefrom by conditions annexed." The railroad company contended, that, notwithstanding this exception of mineral lands, it meant only such mineral lands as were then known to be mineral, but the opinion points out that there is a distinction in the act between mineral lands and several of the other classes of lands which were excepted, (page 316). "There is, in our judgment, a fundamental mistake made by the plaintiff in the consideration of the grant.

Mineral lands were not conveyed, but, by the grant itself and the subsequent resolution of Congress cited, were specifically reserved to the United States, and excepted from the operations of the grant. Therefore, they were not to be located at all, and if in fact located, they could not pass under the grant."

Some comment is then made on the conclusive nature of the patent when issued, and then the opinion states (page 318), "But grants in aid of railroads (and we speak of no other grants) before such determination and issue of a patent, have never been held to pass other minerals than iron or coal. and it is only with other minerals, and lands containing them, that we are concerned in this case." It is then demonstrated that there was a necessity surrounding the grant that the Land Department should have time for examination of the lands as to their character, as being mineral or non-mineral, owing to a lack of survey, and many other facts which are there discussed, and proceeding: (page 321), "The Act of Congress does not provide that selections of the lands by the plaintiff. as a part of its grant, shall in any respect change its purport and effect and eliminate any of its reservations; nor does it empower the officers of the local land office to accept the list as conclusive with respect to such grant in any particular."

The opinion then points out that the last act indicating this identification of the lands as non-mineral in passing upon the grant, and in fact the only evidence of such act of identification provided for by the act making the grant was the issue of the patent and reaches the conclusion that under the grant in question (page 330). "The fact remains that under the law the duty of determining the character of the lands granted by Congress and stating it in instruments transferring the title of the government to the grantees, reposes in officers of the Land Department. Until such patent is issued defining the character of the land granted, and showing that it is non-mineral, it will not comply with the Act of Congress in which the grant before us was made to the plaintiff."

In the swamp land act, a distinct act of identification was provided for, and evidence of such act was to be issued by the department, and transmitted to the Governors of the several States, before any patent was to issue, so that so far as the judgment of the department on the subject matter was concerned, the patent was but cumulative evidence of what had already been evidenced by the lists and plats.

The cases of Chandler vs. Calumet & Hecla Mining Co., 149 U. S. 79; McCormick vs. Hayes 159 U. S. 332, and Locomotive Co. vs. Emigrant Co., 163 U. S. — are not analogous. In each of these cases the claimant under the swamp grant sought to attack a patent solely by proof of the actual character of the land, no lists or plats had been made certifying the lands to the States of swamp lands. It also appeared that the State had in each instance taken the lands under other grants in which the Land Department had acted.

It is true that in the cases of McCormick vs. Hayes and Locomotive Co. vs. Emigrant Co., some emphasis seems to be laid on the words "on that patent the fee simple to said lands shall vest in said State," etc. It is submitted, however, that the argument in both opinions, supports the contention here made that the act of identification was complete by the approval of the lists and maps, and as to the facts thus determined, the Secretary of the Interior was functus officio. Quoting from the opinion in the latter case, "When he made such identification, then, and not before, the State was entitled to a patent." etc.

When identified they became severed from the public domain, a vested interest had passed, the extent and character of that interest to be evidenced by the patent, which the State by the act of identification was in situation to demand.

The same doctrine has been recognized and acted upon by the authorities of the Land Department at Washington, January 4, 1856. Secretary McClelland instructed the Commissioner of the General Land Office with reference to selections made in the State of Louisiana under the act of March 2. 1849. "The approval of the list directed to be prepared under the act of 1849, exhausted the power of the Secretary of the Interior over the subject-matter, and he can no more, of his own motion, revoke or cancel any part of an approved list under that act, after it has passed from him, than a patent for land after its delivery." (1 Lester's Land Laws, 554.)

Secretary Thompson to the Commissioner of the General Land Office, December 29, 1857 (1 Lester's Land Laws.) 557, with reference to swamp lands in the State of Missouri, says: "In my opinion the approval and certification of my predecessor, are the completion of a duty in regard to swamp and overflowed lands, imposed on the Secretary of the Interior by said act of September 28, 1850, and his act cannot now properly be reviewed or recalled. The State authorities have a right to call for a patent or patents pursuant to certified lists unless fraud or mistake has been discovered.

And again, the same Secretary, on October 24, 1858 (1 Lester's Land Laws, 562), said: "I am of the opinion that the question of the swampy character of such tracts as have been carried into approved lists, and certified to the Governor of the State as such, has already been determined affirmatively, so far as the action of this department is concerned, and contests on that point can no longer be properly entertained.

* * * When selections under the act of September 28, 1850, have been approved and certified, the duty of designating the granted lands imposed by the law on this department, has been discharged, the acts done cannot be recalled or annulled, and the State has a right to demand a patent for the tracts of lands embraced in any certified list that has been delivered to the Governor."

Attorney-General Black gave his opinion to the Secretary of the Interior November 10, 1858 (1 Lester's Land Laws, 564), in which he stated: "It is not necessary that the patent should issue before the title vests in the State under the act of

1850. The Act of Congress was itself a present grant, wanting nothing but a definition of boundaries to make it perfect; and to attain that object, the Secretary of the Interior was directed to make out an accurate list and plat of the lands, and cause a patent to be issued therefor. But when a party is authorized to demand a patent for land, his title is vested as much as if he had the patent itself, which is but evidence of his title. The authority given to the State Legislature to dispose of the lands upon the patent does not make the grantee less the exclusive owner of them than she would be if those words were omitted."

Secretary Thompson, in a communication to the Commissioner, dated July 22, 1859 (1 Lester's Land Laws, 570,) used the following language: "Sir—In returning the papers which were submitted, by request of Hugh Short, Esq., with your letter of the 20th inst., I remark, that when a tract has been selected, and has been approved and certified as a swamp tract, inuring under the act of 2d March, 1849, to the State of Louisiana, the fact of the land being of a swampy description must be regarded by us as affirmatively determined, and not to be drawn in question, or subject to a different adjudication."

And the Land Department continued to act under this construction of the law until 1886, when Secretary Lamar, while approving of the decisions above cited, added an extraordinary qualification to them by asserting that the approved list might be altered and the selections therein annulled until patent was issued.

III.

THE SECRETARY OF THE INTERIOR, HAVING IDENTIFIED THE LANDS AS SWAMP BY MAKING A LIST AND PLAT THEREOF IN COMPLIANCE WITH THE SECOND SECTION OF THE ACT OF SEPTEMBER 28, 1850, WAS WITHOUT POWER TO ANNUL, CANCEL OR REVOKE SUCH DESIGNATION, NOR COULD HIS SUCCESSOR

ANNUL, CANCEL OR REVOKE HIS DESIGNATION, AND THUS WITHDRAW THE LANDS FROM THE OPERATION OF THE GRANT.

Under the principles laid down in the foregoing discussion, the State became the legal owner of the lands in controversy under the act of identification.

On the part of the defendants, it is contended that this identification, this judgment of the Secretary of the Interior evidenced by the lists and plats forwarded to the State of Michigan, was erroneous inasmuch as it was founded upon evidence which they allege was fraudulent, and did not show the true state of the facts as to the character of the lands, and that therefore, the Secretary of the Interior was imposed upon, mistaken and erroneous in his conclusion, and that it was competent for him, on this fact appearing, to revoke his former decision as evidenced by his certificates of approval, and to cancel or revoke the lists in whole or in part, on the principle that the proceedings were vitiated by the fraud alleged to have been perpetrated.

The documents and other matters upon which these allegations seem to be based have already been referred to (see p. 70 et seq.) and then pointed out how these with other matters must necessarily been before the Secretary of the Interior when he examined and finally approved the list Ionia No. 1, and requested the Governor to call for patent.

To this we add as a fact which may have had some influence upon his decision.

Prior to the time of the resurvey of the township by Cannon, in 1856, land in this township had been sold by the United States government upon twenty-two of the thirty-six sections, amounting in the aggregate to over 31,000 acres. These sales were made by the old plat and survey, which been recognized as the official government plat for seventeen years at the time of such resurvey. In order to show more fully the extent to which the General Land Office had recognized

the survey of 1839, prior to 1858, plaintiff in error sought to show by its witness, Oscar Palmer, that prior to 1853 and between 1850 and 1853, the General Government had through its Land Department sold lands in nearly every section of the town, and particularly had sold lands in the sections involved in this controversy, and thus had recognized this survey, and it had been in actual use by the Government from 1839 up to March 3, 1857. This testimony the court decline to admit. In view of the facts already presented and what will follow, we submit that the testimony was material and relevant to the issue, and should have been admitted.

Tubbs vs. Wilhoit, 138 U. S. 134, 146.

No charge is made of any fraud on the part of the State of Michigan, or that the State in any manner induced or obtained the approval. The State had no duty to perform, it was the duty of the Secretary to proceed without any request.

U. S. vs. Louisiana, 123 U. S. 32, 37.

Moreover, the State, by virtue of the act of June 28, 1851, had done the only thing she could do in the premises.

We must therefore consider the judgment of the Secretary as a negation of the charge of fraud or error, or at least, that in his mind it was not of sufficient importance to affect the character of the land embraced in the list, or effect the arrangement which had been entered into as to the basis of making such a selection.

The conclusive nature of such a judgment upon the facts by the Secretary as a special tribunal is too well settled and determined to need discussion or citation of authority. Many of the cases have already been referred to, and the subject is so fully discussed in *Johnson vs. Towsley*, 13 Wall., 72, and a multitude of other cases, as not to need amplification here.

If we consider the matters referred to as the basis of this charge of fraud, as now renewed by the allegations of defendant's answer in this case, we must presume, and it follows as a necessary result, from the conclusive nature of this decision of the Secretary that the matter had been passed upon by the Secretary in 1853, and settled adversely to the claim of defendants.

Has any new or further evidence been brought forward by the defendants, or was any new or further proof produced to the Secretary upon the allegations of fraud, mistake or erroneous action can be predicated?

The only matter shown by the record, and it is submitted it is all that can be shown, is that in September, 1856, the town was resurveyed, and the map of survey approved February 12, 1857 (Exhibit 123 p. 174), and under date of May 13, 1858, the Surveyor-General made a new list called Grand River Supplemental No. 3, which included this township, which was received at the General Land Office May 20, 1858. No action was taken upon it by the Secretary of the Interior, however, until 1866 (Exhibits 124 p. 175, 125 p. 177, 126 and 127 p. 178).

In stating some of the facts relative to this, the opinion of the Court of Appeals, (p. 333), in referring to Ionia Approved List No. 1., as having been approved October 27, 1853, and sent to the Governor January 13, 1854, says: "In the margin of the descriptions contained in town 18 north, of range 3 west was written the letter "F" which was explained in the accompanying certificate to mean that the survey of that township had been reported fraudulent." This is a mistake. No such certificate attached to the Ionia list, nor is this town marked "F." Exhibit 111, (p. 153) is from the State Land Office.

The certificate referred to is attached to Surveyor General's list Grand River No. 1., certified by the Surveyor General, March 29, 1852, and sent to the General Land Office, March 31, 1852. (Exhibits 11 and 26 pp. 24 and 36.)

It was this list which the Secretary of the Interior had be-

fore him and from which he made up the approved list Ionia No. 1, and as already pointed out his approval must stand as a negation of the charge of fraud, or at least that it was not of enough importance to affect the question of approval.

It is submitted that the only possible effect of these surveys and the preparation of these lists, was to re-state in a new form the same allegations of fraud that had existed and had been made prior to the approval list (Ionia No. 1, in 1853), and at the most, they cannot be considered as anything more than cumulative on that subject.

Not every allegation of fraud is sufficient to vitiate a judgment of a court or of a special tribunal of this character, nor will it lay the foundation for the courts, by judicial proceedings to set aside the action or finding of the special tribunal.

In United States vs. Throckmorton, 98 U. S. 61, a bill in chancery was brought by the United States to have a decree of the circuit court set aside, and declared null and void a confirmation of a claim under a Mexican grant, which had been made by the Board of Commissioners, and affirmed by the court. The general ground was that the decrees were obtained by fraud. Mr. Justice Miller rendered the opinion, and on page 66, stated, "On the other hand, the doctrine is equally well settled that the court will not set aside a judgment because it was founded on a fraudulent instrument or perjured evidence, or for any matter which was actually presented and considered in the judgment assailed." The court then cited several cases in support of the point, and quoting from Green vs. Green, 2 Gray, 361, says, "the maxim that fraud vitiates every proceeding must be taken, like other general maxims, to apply to cases where proof of fraud is admissible. But where the same matter has been actually tried, or so in issue that it might have been tried, it is not again admissible, and the party is estopped to set up such fraud, because the judgment is the highest evidence, and cannot be contra-

* * "We think these decisions establish the doctrine on which we decide the present case, namely, that the acts for which a court of equity will, on account of fraud, set aside or annul a judgment or decree between the same parties, rendered by a court of competent jurisdiction, have relation to frauds, extrinsic or collateral, to the matter tried by the first court, and not to a fraud in the matter in which the decree was rendered. The mischief of retrying every case in which the judgment or decree rendered on false testimony, given by perjured witnesses, or on contracts or documents whose genuineness or validity was in issue, or which are afterwards ascertained to be forged or fraudulent, would be greater, by reason of the endless nature of the strife, than any compensation arising from doing justice in individual cases." And referring to the proofs in the case under consideration, said, "the genuineness and validity of the concessions from Micholtorena, produced by complainant, was the single question pending before the Board of Commissioners and the district court for four years. It was the thing and the only thing that was controverted, and it was essential to the decree. To overrule the demurrer to this bill, would be to retry, twenty years after the decision of these tribunals, the very matter which they tried on the ground of fraud in the document on which the decree was made."

The remarks of the court are particularly applicable for the first period at which there is any attempt to set aside or revoke approved list. Ionia No. 1, by the Land Department that can be pointed out by the defendants was fully 13 years after the date of approval, and the revocation is not then express, but rests entirely on inference.

In Vance vs. Burbank, 101 U. S. 514, the doctrines above announced were applied to decisions of the Land Department. Chief Justice Waite, at page 519, said, "The appropriate officers of the Land Department have been constituted a special tribunal to decide such questions, and their decisions are final

to the same extent that those of other judicial or quasi-judicial tribunals are. It has also been settled that the fraud in respect to which relief will be granted in this class of cases must be such as has been practiced on the unsuccessful party, and prevented him from exhibiting his case fully to the department, so that it may properly be said that there has never been a decision in a real contest about the subject matter of inquiry. False testimony or forged documents are not enough, if the disputed matter has actually been presented to or considered by the appropriate tribunal (citing cases). The decision of the proper officers of the department is in the nature of a judicial determination of the matter in dispute."

The principle was early asserted in United States vs. Arredondo, 6 Pet., 729, and quoted with approval in United States vs. Land Company, 148, U. S. 31, 43. "It is a universal principle, that, where power or jurisdiction is delegated to any public officer or tribunal over a subject matter, and its exercise is confined to his or their discretion, the acts so done are binding and valid as to the subject matter; and individual rights will not be disturbed collaterally for anything done in the exercise of that discretion, within the authority and power conferred. The only question which can arise between an individual claiming a right under the acts done, and the public, or any person denying its validity, are, power in the officer and fraud in the party. All other questions are, settled by the decision made, or the act done, by the tribunal or officer; whether executive (1 Cranch, 170-171), legislative (4 Wheat 423; 2 Pet 412; 2 Pet, 563), judicial (11 Mass., 227; 11 S & R. 429; adopted in 2 Pet, 167-168) or special (20 Johns, 739, 740; 2 Dow, P. C., 521, etc.) unless an appeal is provided for, or other revision by some appellate or supervisory tribunal, is prescribed by law."

The result would be the same even if we conceded that a patent was necessary to pass the title. The interest conveyed by the grant, and evidenced by the identification, was such that the State had obtained a vested right, of which it could not be deprived by any act on the part of the Secretary of the Interior. Such rights can only be divested by a judicial proceeding for that purpose in the courts. The authorities sustaining this point have already been cited, as bearing on a different question, and the quotations there made are fully in point at this place:

Lytle vs. Arkansas, 9 Høw., 314-333. Stark vs. Starr, 6 Wall, 402. Witherspoon vs. Duncan, 4 Wall, 210-218. Cornelius vs. Kessel, 128, U. S., 456-461-463. Wirth vs. Branson, 98 U. S. 118, 121. United States vs. Hughes, 11 How., 552. Carroll vs. Safford, 3 How., 441, 460. Deffeback vs. Hawke, 115, U. S. 392,405.

Furthermore, the contention of the defendants overlooks the distinction between acts that are void and those which are simply voidable. The courts in many cases involving the acts of the Land Department, and other tribunals of a quasi judicial nature, have had occasion to point this out, stating in substance that where the act of the Secretary was wholly without jurisdiction, as for example, he had undertaken to convey lands the title to which was never in the United States, his act was absolutely void; or where he had conveyed lands the title to which had been theretofore conveyed by the government of the United States, such an act might be held void in a court of law. On the other hand, there are a large class of cases where the Secretary of the Interior had undoubted authority to act in the first instance, but his judgment is claimed to be erroneous by reason of fraud or mistake. In the latter class of cases, it is held that his acts in the premises are merely voidable, and that this discretion, deliberation and judgment, exercised in passing upon the questions presented to him, becomes exhausted by the issuing of the order, list or patent required to be issued, and thereafter he is without jurisdiction over the subject matter. If the effect of the exercise of this discretion or judgment in the matter where he has jurisdiction to act at all, is to confer a vested right, the setting of it aside is a judicial function, requiring the interposition of the courts, inasmuch as an attempt to recall the rights thus vested would be an attempt on the part of the department to deprive parties of their property without due process of law. As seen in the cases cited just above, the party having such vested right may stand upon it, and the courts will afford him protection.

As applied to the acts of the Secretary of the Interior, the whole subject is very ably discussed by Mr. Justice Brown in the case of *Union River Logging Railroad vs. Noble.* 147.

U. S., 65.

From the pleadings it appeared that it was alleged that the railroad company was not such as was contemplated by the Act of Congress, being merely a company organized for private purposes and not for the purposes of a common carier engaging in the transportation of passengers and freight. and that the Secretary had been induced to attach his approval to a certain map by reason of false suggestions as to the character of the business engaged in by the railroad com-After reviewing the authorities and pointing out the distinction between such acts as are void and those that are voidable, the opinion holds: "The railroad company became at once vested with the right of property in these lands, of which they could only be deprived by a proceeding taken directly for that purpose. If it were made to appear that the right of way had been obtained by fraud, a bill would doubtless lie by the United States for the cancellation and annulment of an approval thus obtained." Moffat vs. United States. 112 U. S. 24; United States vs. Minor, 114. U. S. 233. A revocation of the approval of the Secretary of the Interior, however, by his successor in office, was an attempt to deprive the plaintiff of its property without due process of law, and was therefore void. As was said by Mr. Justice Grier in *United States vs. Stone*, 2 Wall, 525-535, "one officer of the Land Office is not competent to cancel or annul the act of his predecessor. That is a judicial act, and 'required the judgment of the court."

An earlier case, where the same questions are discussed. is that of Moore vs. Robbins, 96 U.S. 530. In this case the question arose on the right of one Moore, who claimed title under a patent which had been issued to him under the following circumstances: Moore had purchased the land at a public sale at the United States Land Office, in November, 1855. but his right to purchase it was contested before the Register and Receiver by one Bunn who claimed to have the rights of a prior pre-emptioner. The Register and Receiver decided in favor of Bunn, and Moore appealed to the Commissioner of the General Land Office, who reversed the decision of the Register and Receiver and issued a patent to Moore. the issue of the patent. Bunn appealed from the Commissioner of the General Land Office to the Secretary of the Interior, who reversed the decision of the Commissioner and directed the Commissioner to recall the patent to Moore and to issue one to Bunn. Moore refused to return his patent to the land. Mr. Justice Miller delivering the opinion of the court, concedes the Land Department to the fullest extent its right to pass upon the questions involving the issuing of a patent, and on page 533 says. "With the title passes away all authority or control of the executive department over the land and over the title which it has conveyed. It would be as reasonable to hold that any private owner of land, who has conveyed it to another, can of his own volition recall, cancel or annual the instrument which he has made and delivered. If fraud, mistake, error or wrong has been done, the courts of justice present the only remedy." Speaking a little further on the same page "The functions of that department necessarily cease when the title has passed from the government. * * * It is a matter of course that

after this is done neither the Secretary nor any other executive officer can entertain an appeal. He is absolutely without authority. If this were not so the titles derived from the United States instead of being safe and assured evidence of ownership as they are generally supposed to be would be always subject to the fluctuating, and, in many cases, unreliable action of the Land Department. If such a power exists, when does it cease? There is no statute of limitations against the government, and if this right to reconsider and to annul a patent after it has once become perfect, exists in the executive department, it can be exercised at any time however remote. It is needless to pursue the subject further. The existence of any such power in the Land Department is utterly inconsistent with universal principal on which the right of private property is founded."

The same questions were again presented in the case of United States vs. Schurz, 102 U.S. 378. This case was an application for a mandamus to compel the Secretary of the Interior to deliver a period which had been withheld on the ground that the patent had been inprovidently issued, it having been suggested to the department that the lands included in the patent had also been included in a prior application for a town site. After pointing out the distinction between such acts of the department as are merely voidable and those that are absolutely void. Mr. Justice Miller, in delivering the opinion of the court, says. "Here the question is whether this land has been withdrawn from the control of the Land Department by certain acts of other persons, which include it within the limits of an incorporated town. The whole question is one of disputed law and disputed facts. It was a question for the Land Officers to consider and decide before they determined to issue McBride's patent. It was within their jurisdiction to do so. If they decided erroneously, the patent may be voidable, but not absolutely void. The mode of voiding it, if voidable, is not by arbitrarily withholding it but by

judicial proceedings to set it aside, or correct it, if only partly wrong.

From the very nature of the functions performed by these officers, and by the fact that a transfer of the title from the United States to another owner follows their favorable action, it may result that at some stage or other of the proceedings their authority in the matter ceases.

"It is equally clear that this period is, at the latest, precisely when the last act in the series essential to the transfer of title has been performed. Whenever this takes place, the land has ceased to be the land of government, or, to speak in technical language, the legal title has passed from the government, and the power of these officers to deal with it has also passed away." (pp. 401-2.)

IV.

THE TITLE TO THE LANDS IN CONTROVERSY HAVING VESTED IN THE STATE OF MICHIGAN BY THE IDENTIFICATION BY THE SECRETARY OF THE INTERIOR, IT CAN NOT BE DIVESTED BY ANY ACT OF THE SECRETARY OF THE INTERIOR, UNDER HIS AUTHORITY OVER THE PUBLIC SURVEYS AND THE TESTIMONY OFFERED RELATING TO RE-SURVEYS AND THE PROCEEDINGS FOUNDED ON THEM WAS IMMATERIAL AND SHOULD HAVE BEEN REJECTED.

We do not dispute the authority of the Land Department to make resurveys, for it must be conceded as settled beyond all controversy "that the power to make and correct surveys of the public lands belongs to the political department of the government, and that whilst the lands are subject to the supervision of the General Land Office their action is unassailable in the courts."

Cragin vs. Powell, 128 U. S., 691-699, and the cases there cited.

But it is also equally well settled that this authority is limited whenever the private rights of parties have intervened, based on the survey it is proposed to set aside or in any manner correct, so far as such survey undertakes to interfere with or appropriate those rights. For, "It is a well settled principle that when lands are granted according to an official plat of the survey of such lands, the plat itself, with all its notes, lines, descriptions and landmarks, becomes as much a part of the grant or deed by which they are conveyed, and controls, so far as limits are concerned, as if such descriptive features were written out upon the face of the deed or the grant itself."

Cragin vs. Powell, 128 U. S., 696, 699, 700.

The township in which these lands are located, township 18 north, of range 3 west was surveyed in 1839.

Map of township, Exhibit 31, opposite p. 47. Certificate to field notes, Exhibit 30, p. 47.

And the lands in this town had been offered for public sale by the President's proclamation June 15, 1840, and from that time until June 3, 1858, at least, the plat was the only recognized plat of survey in that township,

Testimony of Oscar Palmer, pp. 49-50,

and sales had been made by the general government with reference to the plat of the survey of 1839.

Testimony of Palmer p. 52.

Certainly it was in reference to his survey that the Secretary of the Interior acted in approving the lands, and on it the Register of the United States Land Office marked the parcels in controversy in this suit as swamp and passed to the State (p. 49).

The title having vested therefore, and passed with reference to the survey of 1839, we submit it was incompetent for the Secretary to interfere with these rights by ordering a second survey of the township. There is no pretense that this survey was ordered prior to 1856, the time when the contract was let to Mr. Cannon (p. 125), or nearly three years after the lands had been approved to the State.

Lindsey vs. Hawes, 2 Black, 554, was where a survey had been made in 1833, the maps, plats, certificates and field notes of such survey all filed in the proper offices, the survey approved and acted upon by the government for a period of eleven years, and under it the land sold to Lindsey, the government receiving the purchase price and tendering him a patent certificate, and five years thereafter the first suggestion of the necessity for a resurvey is made, and the court holds that so far as the location of the lines of the quarter section entered by Lindsey the government was bound by the original survey. The same doctrine is laid down in the case of Cragin vs. Powell, above cited, in which Mr. Justice Lamar, delivering the opinion of the court (p. 699), says: "Nor is it denied that when the Land Department has once made and approved a government survey of public lands (the plats, maps, field notes and certificates, all having been filed in the proper office), and has sold or disposed of such lands, the courts have the power to protect the private rights of a party who has purchased in good faith from the government, against the interference or appropriations of corrective resurveys made by that department subsequent to such disposition or sale." On the same point, see the following cases:

> Bates vs. Railroad Company, + Black, 204. Railroad Company vs. Schurmeier, 7 Wall, 272-289.

These resurveys have also been before the Supreme Court of the State of Michigan in several cases, and they have in every instance followed the doctrines here stated. Mr. Justice

Sher wood, delivering the opinion of the court in the case of *Baker vs. McArthur*, 54 Mich., 139, states that where the rights of parties have been "fixed and regulated" by the lines of an old survey which have been lost, the old lines are to be ascertained and re-established, and not new ones constructed by a resurvey; and in this case "It appears, however, this was not done, and when it is not the mischief of unsettling boundaries which have been generally accepted and acted upon usually follows, and this is always to a greater or less extent injurious, and will not be looked upon with favor by the courts whose duty it is to protect the rights of the parties interested against the unlawful encroachments of the parties claiming under such resurveys."

This case was followed in that of Burt vs. Busch, 82 Mich., 506. In this case. Congress, as late as 1877, sought by a recital of the imperfection of previous surveys, to order a new survey of town 18 north, 1 west, one of the towns, by the way, which was included in the same contract of Mr. Nicholson, under which the town in controversy in this case was surveyed, the survey being completed by Mr. Nicholson in 1839. The opinion states, referring to the Act of Congress of 1877. "Long prior to this act the State of Michigan had made selections of these swamp lands and issued its patents to purchasers, describing the lands according to the government surveys, and selling them in the government subdivisions, having reference to the surveys, maps, and field notes of 1839. The rights of the plaintiff had become vested in accordance with this survey at the time of the issue of the patand, as well stated by the plaintiff's counsel, if this Act of Congress of 1877 was permitted to change Mr. Burt's title, the next Congress can pass an act, and say the survey of 1877 was void, and thus purchasers under that survey be divested of rights acquired thereunder" (page 512).

These doctrines were followed again in the later case of Butler vs. Railroad Company, 85 Mich., 246.

As to effect of recognition of an imperfect survey or plat see:

U. S. vs. McLaughlin, 30 Fed. Rep. 147, 162.Tubbs vs. Wilhoit, 138 U. S., 134, 146.

The district judge, seems to have had a different idea of the effect of the ordering of the resurvey, in substance, that it was for all practical purposes a revocation by the Secretary of the Interior of his former approval, and in this the Court of Appeals seems to have concurred. (Opinion p. 340). It would seem to be a sufficient answer to this to say, as we have already at some length pointed out, that if the purpose of ordering a resurvey was to discover or make clear the frauds alleged to have existed in the survey of 1839, it was but a new presentation of the very facts which had been alleged prior to the making of the approval, and which, it must be conclusively presumed, the Secretary passed upon at that time, and by that act disposed of the allegation of fraud. Having passed upon the fact in such a manner that the title of the State had become vested, the matter was no longer within his control. Such an act requires the interposition of the courts.

If the mere ordering of a resurvey is sufficient to work a revocation of an approved list, may it not be done at any period, however remote, and had the Secretary simply withheld patents, he could order such a resurvey today, and next year cause a further resurvey to be made, and thus delay the matter of identification indefinitely.

The cases of Knight vs. Land Association 142 U.S. 161, and New Orleans vs. Paine 147 U.S. 261, 266, are not in conflict with the views above expressed. In both cases the matter of the surveys were incomplete, and further the rights of third parties had not intervened.

THE ACT OF CONGRESS OF MARCH 3, 1857, OPERATED TO CONFIRM TO THE STATE OF MICHIGAN THE LANDS IN CONTROVERSY, AS THEY ARE DESCRIBED IN THE LIST KNOWN AS IONIA APPROVED LIST NO. 1.

It is a fact well understood, that the land officers of the United States, continued to make sales of lands claimed by the several States to be swamp and overflowed, within the terms of the grant. From this cause, and the delay of the Secretary of the Interior in making out the lists and plats identifying the lands inuring to the several States under the grant, a great many conflicts and contested claims arose in the department in relation to what land should properly be listed to the several States. Congress endeavored to protect purchasers as far as possible, and at the same time indemnify the State so far as relates to the lands which had been sold at the United States Land Offices, by its act of March 2, 1855.

10 Statutes at Large, 634.

But the contests seemed to increase in number. Mr. Justice Nelson, commenting upon this in the case of Railroad Company vs. Fremont County, 9 Wall., 89, at 92, says: "The second section of the act provided that compensation should be allowed to the States only in respect to subdivisions taken up by the settlers, which were swamp lands within the true intent and meaning of the act of 1850—that is, where the greater part were wet and unfit for cultivation; and the Land Department therefore allowed parties to contest the claims of the States and give evidence before the proper officers that the subdivision was not of the character contemplated by the law. As a consequence, under this construction of the act, controversies increased between the settlers and the States, and, as stated by one of the Commissioners of the Land Office, the contesting applications pending before the department involved by

estimate three millions of acres, and, on investigation being ordered, papers came into the office by bushels. Pending these proceedings, Congress intervened and passed the act of March 3, 1857." which provided. "That the selection of swamp and overflowed lands, granted to the several States by the Act of Congress, heretofore made and reported to the Commissioner of the General Land Office, so far as the same shall remain vacant and unappropriated and not interfered with by an actual settlement under any existing law of the United States, be and the same are hereby confirmed and shall be approved and patented to the several States."

11 Statutes at Large, 251.

In this case, the State of Iowa, having filed certain lists in the office of the Commissioner of the General Land Office prior to March 3, 1857, they were held to be confirmed to the State as against the railroad company, claiming the same lands under a grant by Congress of May 15, 1856.

The question again arose in the case of Martin vs. Marks, 97 U. S., 345. In this case, the Surveyor-General for Louisiana, under date of May 18, 1852, had filed with the Commissioner of the General Land Office a list of swamp lands, "selected as inuring to the State of Louisiana under the provisions of an act of Congress, approved September 28, 1850, excepting such as are rightfully claimed or owned by individuals." The exact date when this was filed does not appear by the record. but no objection being made in the court below, the court presumed that the Surveyor-General did his duty and that the list was forwarded to the General Land Office some time between May, 1852, and March. 3, 1857. Mr. Justice Miller, delivering the opinion of the court, says: "If the paper, signed by the Surveyor-General, dated May 18, 1852, was on file in the General Land Office at Washington, March 3. 1857, we have no doubt that the act completed and made perfect the title of the State of Louisiana to the land in controversy. If this were so, the title of the plaintiff below was superior to the patent issued subsequently to the defendant; for after the passage of that act the land department had no right to set aside the selections. The approval of them and the issue of patents to the State were mere ministerial acts, in regard to which that department had no discretion, unless it was found that the lands were not vacant, or had been actually settled on adversely to the swamp land claim. The act of 1850 was a present grant, subject to identification of the specific parcels coming within the description; and the selections confirmed by the act of 1857 furnished this identification, and perfected the title."

The district judge in his charge to the jury (p. 209, assignment of error No. 116), apparently adopted the view that the act of 1857 had no application to the State of Michigan. This, it seems to us, is clearly erroneous, inasmuch as such has never been the views of the department in relation to it, and there is nothing in the words of the act from which such an inference can be drawn. The act itself does not refer to the selections made by the States by their own agents, as was done in several of the States, but speaks generally, referring only to the selections, not undertaking to state from what sources they should have been made. Moreover, the act, by express reference, refers to the grant of 1849 of swamp lands to the State of Louisiana, by the very terms of which the selections were to be made and reported by the Surveyor-General. The department has always held that the act of 1857 applied to the selections reported by the Surveyor-General of Michigan, and some of the papers are contained in the Record.

Wilson, Acting Commissioner, to Sanborn, Dep. C.
S. L. O., September 23, 1859, Exhibit 183, p. 279.
Drummond, Commissioner, to Clapp, C. S. L. O., February 20, 1874, Exhibit 187, p. 283.

Drummond, Commissioner, to Clapp, C. S. L. O., January 5, 1873, Exhibit 185, p. 282.

Some of defendant's own exhibits clearly show this: Exhibit 154 (p. 217), where an extra certificate is attached, showing that they were certified as lists selected and reported to the office "prior to the date of the confirmatory act 3d March, 1857," that is, lists prepared and forwarded by the Surveyor-General to the Commissioner of the General Land Office under the instructions of November 21, 1850, as already detailed; Exhibit 134, at page 186, contains a similar certificate, showing the lands approved by reason of the act of March 3, 1857.

It was further contended by the defendants that the act had no effect upon lands which had been carried into lists approved by the Secretary of the Interior, and the district judge apparently adopted this view in his charge to the jury above noted. The weight of opinion from the department and its practice was in fact contrary to this view. In a decision of Secretary Thompson, December 29, 1857 (Lester's Land Laws, Vol. I, p. 557), he states: "In my opinion, the approval and certification of my predecessor are the completion of a duty in regard to swamp and overflowed lands, imposed on the Secretary of the Interior by said act of September 28, 1850, and his act cannot now properly be reviewed or re-The practice of the department of late years has not been in accordance with those views, but the confirmatory act of 3d March 1857, introduces a change of policy and indicates to me a principle of action in such cases. which I do not hesitate to adopt." In the letter of Acting Commissioner Wilson to Sanborn, Dep. C. S. L. O., of September 23, 1859, above cited, he makes application of the act of March 3, 1857, to lands which had been patented to the State prior to that date in the Ionia land district. mond, Commissioner, to Clapp, C. S. L. O., under date of February 20, 1874 (cited above), applies the act of March 3, 1857, to lands which were contained in an approved list for the Detroit district, approved June 25, 1853, but not carried into patent.

Secretary Teller, November 22, 1883, 2 L. D. Dec., 652, reviews the whole question, and there decides in reference to the State of Louisiana, where the lists were prepared by the Surveyor-General and reported under the act of 1849 to the Secretary of the Treasury and had been approved by him, that on a conflict between a resurvey and a new list made subsequent to the approval, the former being made in 1852 and the latter in 1879, that the act of 1857 operated to confirm to the State of Louisiana all of the lands listed and approved under the original survey, which it was alleged was erroneous.

The district judge held that the act of 1857 "Certainly has no application to those lands, the lists of which were set aside and canceled, and of which a resurvey was ordered by the Secretary of the Interior * * * * it could not revive selections which had been so far canceled by the Secretary of the Interior in the line of his duty as to order a resurvey of these lands." (Record p. 290. Assignment of error 116 p. 369.)

The Court of Appeals adopted a similar view. "The act was not intended to include a list which was in the situation of the one under which the plaintiff claims. The list had some time before been acted upon by the Land Department and was expected to stand except in so far as it should be impeached for fraud or error by the resurveys. Congress knew that these resurveys were going on. For several years it had been making appropriations therefor. * * * * new lists had been made and filed in the Commissioner's office based upon the new survey and the plats made in conformity therewith." (Opinion p. 344, assignments of error 118, 122, 123, p. 369, 370.)

These rulings seem to have for their foundation a view of the powers of the Secretary of the Interior which we submit is incorrect, as already pointed out, but outside of that are founded on an entire misconception of the facts. The surveys in this town were not in fieri. They had been completed in 1839. All of the public lands had been offered in 1840, and sales of land had been made in the very sections in controversy based on this survey, as late at least as 1853. Plaintiff offered to show further facts, but the court excluded it against its objection. The new plat was not received at the Register's office until June 3, 1858, (testimony of Palmer pp. 49, 50, 52, 53) and it was only upon receipt of such plats that he was authorized to use it in place of the old one. (Exhibit 69 p. 83.)

No new list was prepared by the Surveyor General until May 13, 1858 (Exhibit 124 p. 177), and not received at the General Land Office until May 20, 1858 (Exhibit 126 p. 178), and the Secretary of the Interior made no new approved list in this town until 1866. (Exhibit 127 p. 179.)

The only *fact*, therefore, tending to show that the old survey and the list founded upon it was canceled is that a resurvey was in progress in the last quarter of 1856. It is submitted that this is not inconsistent with retaining the old list, nor does it *ipso facto* work a revocation of it, and particularly so if *any vested right* had attached in favor of the State.

The land department did not recognize it. December 22, 1858 Commissioner Hendricks recognizes the list as in force, and proposes to ask the Secretaria at some subsequent time to revoke it. (Exhibit 23, p. 32.) Commissioner Wilson canceled railroad selections in 1868 because of this selection (Exhibit 151 p. 210.) See report General Land Office, 1864 (Exhibit 122 p. 174.)

Executive document No. 86, 34th Congress, 1st Session. vol. 14 Senate Documents, contains a very full report, (which extracts have already been given) by Secretary McClelland under date of June 25, 1856, which shows the department, as well as Congress was seeking, in some manner to settle *all* the difficulties. The report is made in response to a resolution requesting:

"Information as to what legislation, if any, is necessary to give full force and effect to the act, known as the 'swamp land law' and to quiet all conflicts and disputed titles arising under the Federal and State governments, respectively." The Secretary says: "I think the whole matter addresses itself to the favorable consideration of Congress, and that while action of the State agents, which either from design or carelessness, has resulted in their reporting land as swamp, which in fact was not, is to be deprecated, yet the greatest liberality should characterize any legislation designed to remedy evil resulting from such action to innocent purchasers from the States upon the faith of such selections." The Commissioner points out that "The States of Michigan and Wisconsin, the former by legislative enactment to that effect, and the latter by the choice of the chief executive thereof, elected to receive those lands which by the field notes of the surveys were shown to be swamp and overflowed." He then details the method of making up the lists, a reference to which has already been made, and after giving the history of the passage of the act of 1850, says: "From the earliest day we were in receipt of letters protesting against the approval of portions of the lands selected," because of the alleged fraudulent character of the selections, and on such an allegation they were withheld from approval, or from patent, if approval had already been made, and as soon as it was found that this rule existed, "many parties in different sections of the country availed themselves of it, and many succeeded in obtaining rejection of the State's claim."

"At the outset this contesting was confined principally to parties who had purchased or located lands at the United States Land Office prior to their selection for the States, but after the passage of the graduation law of the 4th of August. 1854, by which the government minimum for most of the lands was reduced below that fixed upon the States, it became much more general." The Commissioner then points out

several of the difficulties which have arisen and the means taken to adjust them, and finished his report with the following: "The proposition to confirm by the Act of Congress. all selections heretofore made involves the opposing interests of those who may have made purchases from the States and those who are contesting the right of the States under the grant; and it is more properly the subject of the legislative consideration and discretion than of executive judgment. Such an act would relieve this office, as also the district officers, of great labor in the examination and decision of the contests; but that circumstance could have but little weight in settling any principle."

The Commissioner in his report for 1856 (Ex. Doc. 1. 34th Congress, 3d Sess.), refers to this report, page 201, and again makes his recommendation for legislation to settle the difficulties. On page 175, he says: "The difficulties in executing satisfactorily the swamp land grant still exist. Several of the States have passed laws donating these lands for specific purposes, and they now complain that if the selections are set aside for any cause, their faith must be violated. It is contended that most of those who are contesting the rights of the States are mere speculators, and should not be permitted to defeat their permanent interests. That thereby many of the counties and their people will be injured, and the government not correspondingly benefitted. Much of this is true and, although many errors have been committed, yet it is worthy of consideration whether under all the circumstances, it is not the best policy to approve the selections so far as they no not interfere with the actual settlers."

If it be true, that the approval of the Secretary of the Interior did not complete the identification, and that identification was only complete upon the issue of patent, then it would seem to be clear that the act of March 3, 1857, operated to put an end to the question of identification and comfirmed to

the State the title to the lands contained in the Surveyor-General's list, thus ending the controversy.

The plaintiffs clearly brought themselves within the act of 1857, by showing by the witness Palmer that the lands were vacant and unappropriated and not interfered with by actual settlement under the laws of the United States on the 3d day of March, 1857, (Record p. 48) and by showing that the list containing the lands in controversy, Grand River No. 1, (Exhibit 26, p. 36) was transmitted by the Surveyor-General to the Commissioner of the General Land Office March 31, 1852, (Exhibit 11, p. 24) and was acknowledged by the Commissioner April 13, 1852, (Exhibit 12, p. 25).

VI.

THE STATE IS NOT ESTOPPED BY ITS ACTS OR CONDUCT RELATIVE TO THE RESURVEYS OF THE LAND IN CONTROVERSY, OR GENERALLY WITHIN THE STATE, AND HEREIN OF THE TESTIMONY BEARING ON RESURVEYS BOTH PRIOR AND SUBSEQUENT TO 1850, AND THE EFFECT OF LISTS OF LANDS FOUNDED ON SUCH RESURVEYS; AND FURTHER, OF THE EFFECT OF ACT OF MARCH 11, 1861, OF THE LEGISLATURE OF THE STATE OF MICHIGAN.

The matter of resurveys and the course of proceeding in reference to them both on the part of the State of Michigan and the United States is discussed quite at length by the opinion of the Circuit Court of Appeals, and its purport and conclusion is perhaps shown in the following extracts. (p. 338) "While it is not now questioned that the act of 1850 transferred the title to the granted lands in presenti, yet the identification of the lands so that the grant should attach to particular parcels was another matter, and whether a selection of lands was intended to be provisional or final was a question of intention to be gathered in the light of all the circumstances. And while we cannot refer to the understand-

ing with which the law was executed to construe the Act of Congress, we think it is competent, if such understanding of the law can be ascertained, to take it into consideration in determining the consequences intended by the parties from their acts."

(p. 340) "We are, therefore, of the opinion that it was not intended by the Secretary of the Interior, nor expected by the State, that the selection of swamp lands certified and transmitted to the Governor on the 13th day of January, 1854, and which included the lands claimed by the plaintiff, should be necessarily final, but that it was intended to be subject to correction to the extent that the facts shown by the resurveys should require, and that upon its being proven by the resurvey that these lands were not swamp, it was competent to supersede the selection by a correct one."

While the court (p. 345) declined to recognize an estoppel in the form as urged by the defendants, we conceive that the effect of the statements above quoted is substantially the same—that is, the State is bound by its acts (as the court finds its intent) whatever may be the proper construction of the act of Congress.

The grounds of estoppel urged naturally fall into three divisions: (1) The resurveys prior to 1850, and participation of the State therein; (2) The resurveys subsequent to 1850, and (3) the making of new lists and issue of patents for lands included in such lists, and the alleged adjustment based on the acts of Michigan of March 11, 1861.

1. February 1, 1842, the Legislature of the State of Michigan adopted a joint resolution, reciting that large districts of land had been returned by the United States deputy surveyors as surveyed where no surveys whatever had been made, or where the surveys had been imperfectly done, and requests the President of the United States to cause certain townships mentioned to be resurveyed. This act is set out in full in the Record as part of Exhibit 57 (p. 65). A copy of

the act was transmitted to the President by Governor Barry, February 3, 1842, (Exhibit 57, p. 64), and referred by the President to the Land Department. February 17, 1842 (Exhibit 58, p. 65), the Commissioner of the General Land Office reports and suggests that the matter be referred to the Surveyor-General at Cincinnati for a full report of the facts; and the President approves of this course, and advises the commissioner to inform the Governor of the State of Michigan of what had been done. February 21, 1842 (Exhibit 59, p. 67). the Governor is advised of the action taken by the President and the Land Department. Surveyor-General Haines. March 4, 1842 (Exhibit 60, p. 68), reports to the Commissioner, showing how it was possible that errors might have arisen, and suggests that an experienced deputy be sent to examine the districts alleged to have been fraudulent, and upon his report proper action can be taken. Surveyor-General Haines, was instructed, April 2, 1842 (Exhibit 61, p. 74). to cause the districts alleged to be fraudulent to be examined by a competent surveyor, and a copy of these instructions were sent to the Governor (Exhibit 61, p. 74). William A. Burt was employed for this purpose (Exhibit 62, p. 75), and furnished with maps and notes of the surveys alleged by the resolution of the Legislature of Michigan to be imperfectly surveyed. Mr. Burt's report was forwarded to the Commissioner of the General Land Office. August 1, 1842. (Exhibit 63, p. 77). The Surveyor-General in his report for 1843. suggests an appropriation for the purposes of resurveying "erroneous and defective surveys north and west of Saginaw Bay in Michigan" (p. 103). Another appropriation was recommended by the Surveyor-General, in his report for 1844. "for resurveying forty-four townships of erroneous and defective surveys west of Saginaw bay" (p. 109). A recommendation is made in the report for 1845, by the Surveyor-General, "for resurveying fourteen townships of erroneous and defective surveys west of Saginaw bay" (p. 110). In 1848 the Commissioner recommends an appropriation "for the correction of erroneous and defective surveys in Southern Michigan" (p. 112), which last appropriation, if granted, would cover the period ending June 30, 1850. In the report for 1849 the Commissioner recommends an appropriation "for resurveying and correcting erroneous and fraudulent surveys in Michigan," this appropriation for the period ending June 30, 1851 (p. 124).

November 5, 1849, the Surveyor-General, in his report. gives a schedule table, L (page 300), executive document No. 1, 31st Congress, first session (not in Record), showing the townships that had been resurveyed in Michigan up to the date of his report. From this table, and the maps O and P, attached to the report, it appears that all of the townships mentioned in the resolution had been resurveyed excepting townships 25 north, ranges 1, 2 and 3 east; and from map G, in the reports of the Surveyor-General for 1857, by which time the surveys in Michigan had been completed, it would appear that these towns were never resurveyed. In addition to those included in the resolution, towns 21 north, ranges 9, 10, 11 and 12 west, and 15 north, range 6 west, together with seven fractional townships bordering on Saginaw bay, had also been resurveyed. As fast as the plats of the resurvevs in these towns came in the Registers and Receivers seem to have been instructed to no longer use the plat of the old survey in making their sales, but sales should be made from the plats of the new survey.

Blake, Commissioner, to Reg. and Rec., October 1, 1844 (Exhibit 69, p. 83.)

During this period, also, various parties made inquiries as to the course of the resurveys, and the representatives of the State of Michigan in Congress seem to have assisted in the procuring of some of the appropriations. (Exhibits 64, page 78; 67, 80; 68, 82; 71, 72, 87.) The whole course of action

in relation to the resurveys prior to 1850 is quite fully detailed in the report, signed "Moses Kelly, Clerk," under date of February 14, 1851 (Exhibit 75, p. 96), which gives a full resume of matters particularly referred to above.

Had plaintiff's title related to parcels situated in the towns mentioned in the resolution of 1842, it might possibly then be made to appear that this testimony had some bearing upon the subject matter.

It is noted that in none of the resurveys which were had. either on the request of the State or otherwise, prior to September 28, 1850, the township in controversy is involved. The most that does appear upon the record is the statement of Mr. Burt, contained in the report of the Surveyor-General for 1849, and incorporated as table N, extracts from which are given on page 95 of the Record concerning Nicholson's surveys. report certainly was disposed of by the action of the Secretary in 1853 in approving the lands, as already pointed out. Further, the various recommendations of the Surveyors-General for appropriations for continuing the work, all refer to appropriations for the work recommended by the Legislature of Michigan, except, possibly, that recommended in the reports for 1848 and 1849, and it is to be noted that in all of these recommendations, except in 1849 it is only the correction of erroneous and defective surveys that are mentioned. None of these recommendations of the Surveyors-General or Commissioner of the General Land Office refer in any manner to the township in question, and as to the recommendation of 1848, even after the appropriation itself was made, the Surveyor-General was at a loss to know how to use it up, for, in his report, under date of November 5, 1849 (Rec., p. 89), he says: "No contracts have been made for the resurveys under the appropriation of the last session of Congress, for the reason that to enter into such contracts understandingly it was necessary to procure more full or definite information in relation to the character of the defective surveys than has been heretofore in the possession of this office." The appropriation based on the recommendation of 1848, and that on the recommendation of 1849, were still unexpended in 1851 (Report of Surveyor-General, 1851, Record p. 105-106.) Certainly the record fails to disclose any determination on the part of any of the land officers to resurvey the town in question at the time of the passage of the act of Congress of September 28, 1850, and we hear nothing of it until six years later.

The only connection the State had with the matter up to 1850 was the resolution of 1842.

In all of these transactions no thought was had of the swamp land grants. The State had no particular interest in the matter as a land owner. It was wholly immaterial to it how many or what towns were resurveyed. It does not appear that it had any knowledge of the course or extent of the proceedings in this behalf. The general government was surveying its own property and the whole proceeding was under its control.

2. The testimony relative to resurveys subsequent to 1850 was largely extracts from the reports of the Commissioner of the General Land Office and Surveyor-General for the years 1850 to 1858, inclusive, with a few letters passing between the Commissioner of the General Land Office and the Surveyor-General, covering the same period.

The report for 1850 (Exhibit 76, p. 101), contains a report from the Surveyor-General showing the progress of resurveys under prior appropriations. The course of this work is set forth (Record, p. 102), as follows: "Resurveys have also been made in other districts that were reported fraudulent in the field notes of examinations made last year, but, as those examinations were made in a superficial manner, giving, it is true, sufficient evidence of the imperfect character of the original surveys in each district, but not in every township, the deputies intrusted with the surveys were required before commencing the resurvey of any township to ascertain the char-

acter of the old surveys, and not to make any resurveys where they were unnecessary."

March 5, 1851. Mr. Noble, the Surveyor-General, reports to the Commissioner a plan of operations for the coming year and suggests (Exhibit 77, p. 103), "It is important, also, that the defective surveys in the Lower Peninsula should be adjusted in some way, either by an entire resurvey, or as has been done by Judge Burt in the Nicholson contract, by reestablishing and correcting the old surveys as far as practicable, and where any part of the original survey is wanting, supplying the deficiencies by new work." In the report for 1851 (Exhibit 78, p. 105), the Commissioner states that the correction of the defective surveys is a work designed to be performed with proper caution, "and to make the old lines and corners available wherever found." The Surveyor-General reports (p. 106) that, owing to the prosecution of certain suits against former deputies, the appropriation of the last year for resurveys is still unexpended, and says that "exclusive of these contracts now under adjudication, and those now resurveying under your instructions the present season, embracing a few townships near Grand Traverse Bay, it is not known to this office that any pressing necessity exists for further resurveys."

February 10, 1852, (Exhibit 79 p. 107), Mr. Noble, Surveyor-General, submits a plan of operations for the work of that year. He seems to think (p. 141) the instructions of the Commissioner of the 25th of June last are of a restricted character, and seems to think some discretion should be left to the deputy in charge of each case. He says it has been the design of the office to disconnect the examinations from the resurveys, although the expense has been somewhat increased, "Yet no resurveys could be ordered without such a preliminary examination, nor could it be expected that a deputy would enter the field with the expectation of receiving no compensation for his examinations unless he were assured of sufficient work in the resurveys to compensate him for such extra services."

He also states that the returns of some of the deputies exhibit defects in township lines, and that, however necessary it may be "to respect and retrace them," it frequently becomes necessary to supply deficiencies and to change the position of some of the boundaries, and suggests that it would appear that in any of the defective surveys the marks of the original survey should not be respected but obliterated, thus making an entire new survey of such a district (p. 109), a plan not approved by the department.

Commissioner Butterfield, in a letter of March 8, 1852 (Exhibit 80, page 112), instructs the Surveyor-General that where a portion of the lines are found in a township to have been actually surveyed, and they can be retraced, they are to remain undisturbed and be respected, whether sales have been made in that town or not, but where there is no evidence found of any good intent on the part of the deputy surveyor to comply with the terms of his contract, and in case of "an entire absence of marks and monuments whereby to designate the corners, and where no lines are traceable," any old irregular lines and corners are to be carefully obliterated and a new survey made, but if settlers are found upon any of the tracts their boundaries are to be preserved if they insist upon it.

The reports for 1852 and 1853, (Record, p. 113, 115), dwell largely on the difficulties attending the preparation of the swamp lists and the consequent delay in issuing patents.

The reports for 1854 and 1855. (Record p. 119) shows the resurveys still in progress. In the report for 1856 (p. 122), the Surveyor-General intimates that he is about closing the public surveys in the State, the report for 1857 states the closing of the Surveyor-General's Office and its removal to St. Paul (p. 122).

The appropriations for resurveys during this period were made in 1850, 1851, 1854, 1855 and 1856, and were "for resurveying and correcting erroneous surveys," and "for con-

tinuing the examinations and corrections of old, imperfect and defective surveys," and "for the resurvey and correction" of a certain number of townships.

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1850. 9 Statutes at Large, p. 530 (September 30).
1851. 9 " " p. 611 (March 3).
1854. 10 " " p. 565 (August 4).
1855. 10 " " p. 660 (March 3).
1856. 11 " " p. 86 (August 18).
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None of these reports of the Surveyor-General, or the correspondence between the Surveyor-General and the Commissioner of the General Land Office, mention a resurvey as necessary for township 18 north, range 3 west, except the intention to make such a contract expressed in the report of the Surveyor-General, November 1, 1855, and the mention of the completion of the survey in 1857.

It would seem that the question of the character of the land itself, whether it was swamp and overflowed, so as to be unfit for cultivation, was a question wholly distinct from the question of the defective character of surveys. The primary purpose of the surveys was the establishing of lines and corners, so that any particular parcel of land could be found, and it is easily seen that a survey might be defective as to the establishment of corners and boundary lines and yet the general character of the land be the same under a perfect survey as to such corners and lines as under the one alleged to be erroneous, and that a resurvey for the purpose of re-establishing those lines and corners be had without affecting in any essential particular the character of the land.

That the survey of this township, made in 1839, was sufficiently perfect to enable the general government to sell land from it for a period of nearly eighteen years before a resurvey was ordered, and a period of nearly fourteen years before the Secretary of the Interior approved the land in controversy to the State of Michigan, and that this survey was

sufficiently complete in its description of the land to enable the Secretary of the Interior to declare the land to be swamp, notwithstanding the allegations of fraud which were made and had been made some time prior to his approval, has already been made quite clear. The map of resurvey shows that these old corners were found and retained by the new survey.

This had been the instructions of the department prior to February 17, 1842, the Commissioner instructs the Surveyor-General (p. 67) to inquire into the "state of those surveys and their completion on the field without disturbing the titles which may have already or shall have become vested" "according to the original marks." And in the instructions under which the resurveys were prosecuted, of April 2, 1842 (p. 74), he is directed to "be particularly careful in your instructions to the deputy to prevent any departure from the original marks made on the ground in the existing surveys which would disturb the title acquired by purchasers, and the amended field notes should show by references to marks that they have been found and adopted." And in 1849 (Exhibit 73, p. 88), the Surveyor-General, referring to instructions sent him in June of that year, quotes from it as follows: "That the deputies who may be intrusted with the correction of the erroneous surveys be especially instructed to re-establish all the original lines and corners where they can be clearly identified, and where they cannot, to resurvey them in strict accordance with the original field notes, apportioning all errors and discrepancies of the course and distance among the boundaries of sections affected thereby."

The wonderful report of Mr. Burt, extracts from which are found on pages 94 and 95, refers almost entirely to the manner in which the lines have been run, making but very little, if any reference to the character of the land as shown by the notes. Mr. Burt, in making the resurvey of the district surveyed by Nicholson, upon whose contract he was a surety, which contained ten townships, resurveyed but five of them

entirely, and the others but merely corrected, so that in the report of 1850 this district is reported to now be in good con-

dition (pp. 101-2.)

No different instructions as to the manner in which the resurveys should be conducted were ever given. Moreover the State in 1850, if it can be charged with knowledge of the contents of the public reports of the General Land Office, (and it had no other information) had no reason to anticipate any general and extensive work of resurvey. We have already shown how all of the work requested in 1842 had been completed prior to 1850.

In the report for 1845, at p. 2 (not in Record), the Commissioner says: "In Michigan, the great Southern Pe msula has all been surveyed and the lands offered for sale, with the exception of a body of twenty-three townships reported to be of an inferior quality." In the report for 1846, at p. 2 (not in Record), the Commissioner of the General Land Office again stated that, "In Michigan, all lands which have been attached to land districts, except a few townships not considered very valuable, in the Southern Peninsula, have been duly offered," and on p. 40 (not in Record) of the report, the Surveyor-General, stating the condition of the surveys, says that there remain but ten townships "of erroneous and defective work to be resurveyed, and these, with the subdivision of twenty-three unsurveyed townships north of the third correctional line, and of about three and one-half townships in the Manistee reserve on the border of Lake Michigan, will complete the surveys of this peninsula."

It is quite apparent, therefore, that at this time the surveys in the Lower Peninsula at least were practically closed, and that with the completion of the surveys of some unsurveyed portions of the Upper Peninsula the surveying business of the district of Indiana, Ohio and Michigan would soon be closed. The resurveying, however, of the districts called for by the resolution of the Legislature of Michigan of 1842, apparently

opens to the parties engaged in the business of surveying a very fruitful source of revenue, the contract price being nearly double that formerly allowed, and one which they were loath to relinquish, for, we soon find, the Surveyor-General finding some reason for a continuation of the surveys, and particularly the business of resurveying. And it was not until the rather tart letters of Commissioner Hendricks in 1857 (Exhibits 171, 173, 175, pp. 253-259), that the matter was finally closed, at which time nearly three hundred and fifty townships had been resurveyed, and the reports of 1856 and 1857 would indicate that the foundation had been laid for resurveying at least seventy-five to eighty townships more, the reports of the fraudulent character of which was equally as strong as that upon which the previous surveys had been founded.

It is upon the reports of the Surveyor-General for the years 1850 to 1856 in which we are gravely informed "there is a high probability," or that there is "reason to believe," or that certain districts are "strongly suspected," or that "it is feared," and the statements that an examination had been made of some few miles of section lines in a district of from ten to twenty townships, or an examination of a portion of a township in an entire district, upon which the remarkable deductions were made that the entire district, not only in that contract but in other contracts, were fraudulent, that the resurveys were continued. In no place do we find mention of any connection with the State of Michigan.

It is submitted by the plaintiff in error that the testimony relating to the character of the old surveys was wholly irrelevant and immaterial, inasmuch as the whole matter would be concluded by the action of the Secretary of the Interior in reference to the lands in controversy in this suit. If it be true that the Secretary of the Interior had identified this land, as claimed by the plaintiff in error, as swamp, inuring to the State of Michigan under the act of Congress, then it was immaterial as to the character of the testimony upon which he passed,

and as he had before him all the allegations of fraud upon which the subsequent resurvey was had, the whole matter must be deemed concluded by his judgment expressed in the listing of the lands to the State.

If the contention of the defendants be true that this approval was revoked, then the character of the survey, or the character of the land itself, would be entirely eliminated from the controversy by reason of the operation of the act of March 3, 1857, as already pointed out. If the question of the character of the land be open in any respect, then the testimony, so far as it relates to the town in question, is immaterial and irrelevant, because the survey, made in 1856, is not a showing of the character of the land in 1850, and it is as to the character of the land at that time that the proof must relate, both under the act of Congress and the arrangement between the State of Michigan and the Secretary of the Interior for the use of the field notes.

Certainly the production of testimony having any tendency to show irregularities in the surveys of other townships than the one in controversy, or tending to show a fraudulent representation of the character of the lands in such other towns, cannot have any bearing upon the question as to the character of the lands in the town in controversy in this suit.

If the purpose of the testimony was to show that the Secretary of the Interior was imposed upon by the evidences of the old survey which he had in his possession, because of its fraudulent nature, as alleged, then we submit that in an action of ejectment such testimony is improper as an attempt to set aside the judgment of the Secretary of the Interior in a collateral proceeding. And even in a direct proceeding it would not be admissible under the doctrines of *U. S. vs. Throckmorton*, and other cases cited *supra*.

3. The State never assented to the use of the lists alleged to be based on the resurveys as a basis of making up approved

lists, nor acquiesced in any alleged cancellations or revocations of approval by reason of the coming in of such lists.

It should be borne in mind that the State was not bound to make any claim for lands under the grant; its rights in no way depended on such action.

U. S. vs. Louisiana, 123 U. S., 32, 37.

It is not contended that the State had any intimation that the resurveys would have any effect upon the grant until 1855, or more than a year after the list Ionia No. 1 had been received and the Governor had requested patents to issue.

On February 24, 1855 (Exhibit 119, p. 171), Mr. Wilson. the Commissioner, wrote to Governor Bingham, stating: "The Surveyor-General of Michigan has transmitted to this office a list of swamp and overflowed lands in the Cheboygan district, Michigan, in townships 'resurveyed and platted,' which list 'abrogates and supersedes all lists of swamp lands heretofore made of the townships contained within it.' list embraces the following townships: The original selections in the foregoing townships, made from the defective plats, were approved in lists Nos. 1, 2 and 3 in the Ionia district, Michigan, certified copies whereof were transmitted to your predecessor, January 13, 16 and 18, 1854. In consequence of the alteration necessary, by reason of the list recently received, I have the honor to request a suspension of all action upon the lists heretofore furnished you, so far as these several townships are concerned, until the differences can be ascertained and adjusted." This communication was never replied to, indeed the Governor had no authority to consent to such an arrangement as was suggested by the Commissioner, so far as the list superseding and abrogating the lands embraced in the approved list. Governor Barry had declined to elect whether the State would receive its grant upon the basis of the field notes or otherwise, and referred the matter to the Legislature, which is the representative of the State so far as property belonging to the State is concerned. The Legislature can authorize by law certain of its officers to dispose of its property, or to manage and control it, but their authority proceeds from the Legislature. That body has never authorized the Governor of the State to surrender any of its rights to lands granted to it, unless the particular lands and the particular authority is vested in him by the statute. This has never been done with reference to the swamp land grant. The letter recognizes the fact that there must be an adjustment before the resurvey can have any effect upon the rights of the State.

The annual report of the Commissioner of the State Land Office for the year 1855, (Exhibit 120, p. 172) refers to this letter, and states: "This office was notified in February last, by letter from the Commissioner of the General Land Office, of the resurvey by the general government of considerable tracts of land, embraced in the lists of swamp lands, including several townships in the northern part of the State, situate principally in the Ionia land district, and the same have been, as directed, marked as suspended on our books. Information has also been received from the Surveyor-General's Department that resurveys of a large number of townships in which swamp lands are included, in the northern part of the State, have been in progress the past season. Whether any material difference in the quantity of land inuring to the State under the Act of Congress will be effected by such resurveys cannot as vet be ascertained."

No action was taken by the Legislature upon this report. The report simply recognized the fact that the general government are surveying its lands, and are making out new lists of swamp lands, but whether the grant to the State will be increased thereby or not was not known, and the resurveys and the new lists were not recognized as affecting the status of the arrangement which had already been entered into.

The report for 1856 of the State Land Office mentions the delay in receipt of patents (Exhibit 118, p. 170.)

The next communication bearing on the subject received by the State authorities is the letter of Commissioner Hendricks of December 22, 1858, (Exhibit 23, p. 31).

He said: "In view of the basis adopted by the State in designating the land granted, and the numerous surveys made since the passage of the law, presents peculiarities which require an action on the part of the authorities of the State to enable us to adjust the business with proper regard to the evidences in the case. To present the matter is the purpose of this communication. The Surveyors-General of the district, from time to time, have reported selections in lists from the evidences of the surveys as originally made. Such selections were examined by the records of this office, and so far as they were found vacant and not interfered with by settlements, were submitted to, and approved by the Secretary of the Interior. The authorities of the State were immediately thereafter furnished with certified copies of the lists containing lands thus approved. Since such approvals were made and certified, the Surveyors-General, upon the evidences of the resurvey of many townships, have forwarded lists to supersede and abrogate the reports made in townships described therein. These subsequent selections differ materially from the former ones. The patents for probably one-half of the townships in this condition, as originally selected and reported, were prepared and transmitted prior to the receipt of the subsequent reports based upon the evidences of the resurvey. balance of the selections originally made, and which are superseded by reports under resurveys, have been approved and certified, but are not carried into patent, nor can they be as thus approved, for the reason that the reports made after the resurveys are the only proper evidence upon which our action must be made in determining the grant. So far as the patents have been issued, it is not intended to make any al-

teration in the lists, but when the indemnity provisions of the act of March 2, 1855, come to be executed, a comparison between the reports based upon the original surveys and reports made after resurveys, will be made, and where the lands in the original reports do not appear in the subsequent reports, a deduction to that extent will be made from the indemnity This, it is believed, will be equal justice to all certificate. interested. The paper herewith inclosed will show in what townships the lands have been patented as first selected, and those townships in which the lands are approved but not patented, and it is forwarded with the request that the proper authorities of the State may elect to receive the grant, with reference to those townships in which e lands have not been patented, as the selections are made upon e evidences of the resurveys." Accompanying the letter are two lists, found upon pages 33 and 34 of the Record.

It will be observed that the Secretary of the Interior recognized that the rights of the State had attached to the lands embraced in the approved list, although not patented, and that he wished the State to elect whether or not they would receive the grant under the resurveys or would adhere to the original surveys. The only competent authority of the State to make that election was the Legislature, and the Legislature never elected to take the lands under the list as resurveyed, or to relinquish the lands that had been designated under the original survey.

This letter from the Commissioner of the General Land Office was, on April 5, 1859, (Exhibit 157, Record, p. 221), transmitted by Mr. James W. Sanborn, Commissioner of the State Land Office, to Governor Wisner. He states that he compared the list sent by the Commissioner with the list sent to his office as a resurvey, and that the resurvey makes the amount in the list prepared by him nearly 79,000 acres less than that in the original list, "which operates against the interests of the State, not only in the number of acres, but much

more so in the quality of the land. The difference in the land now patented to the State between the old and new surveys amounts to 235,000 A., and I judge by this communication that the department at Washington do not propose to change that list, and under all circumstances in the case I don't know why they cannot give us the patents under the old list as approved with same propriety that they have the others. erroneous surveys were known to the department before these patents were made, and must have come within the knowledge of the department about the time Congress made the law, granting the swamp lands to the State. * * * I hope you will look the whole matter over, and answer the inclosed letter as soon as you can consistently." No answer was ever returned by Governor Wisner to the letter of the Commissioner of the General Land Office. The Legislature of 1859 had adjourned on the 15th of February preceding, and another one would not convene until 1861. In his message to the Legislature of 1861, he made no mention of the letter of the Commissioner of the General Land Office

In the report of the Commissioner of the State Land Office for 1860, (Exhibit 160, p. 226), he said: "The complications of the swamp land question between the State and general government have not been diminished during my administration, and in view of the constantly increasing difficulties produced by delay, I commend them to your particular attention. With much care I have caused to be prepared lists conclusively showing the discrepancies which prevent an adjustment of the questions which have arisen, and add a summary thereof hereto." He then states the number of acres that have been approved to the State, and the number of acres that have been patented, which statement he thinks is very nearly correct. He further calls attention to the differences between the surveys as originally made and the resurveys as to the quantity of land inuring to the State, and then says: "We gather from the correspondence on file in this

office between the State authorities and the department at Washington, that the general government proposes to adopt throughout the resurveys as the basis of patents. * * * No patents have been received since January, 1859, and I think, therefore, we have reason to fear that the department at Washington is withholding those about which there is no conflict, as a lever with which to compel the adjustment of the remainder in accordance with their proposition."

As the defendants seem to rely upon the act of the Legislature of 1861 (Appendix No. 2,) it is worth while to examine the origin of this act and its evident purposes.

The Commissioner, in his report for the year ending November 30, 1860, calls attention to the various acts, besides the swamp land act under which the State has received lands from the general government, and particularly the primary school lands, university lands, normal school lands, State building lands, asylum lands, salt spring lands, internal improvements lands. All of these latter grants were grants of a determinate quantity of lands, either a certain acreage or certain sections of lands being granted, and the commissioner points out that there is deficiency in these several grants of an acreage varying between 46.725.16 acres in the case of the school lands, and a fraction over 8 acres in the normal school lands, and while the Commissioner undertakes to definitely state the acreage of deficiency in these several grants, he makes no statement of this kind in reference to the swamp lands, nor does he make any claim of acreage except as he points out that there was a considerable number of acres which had been approved to the State which were not yet patented. In reference to selecting the deficiency in the amount of school lands, the Commissioner makes the following recommendation: "And, in view of the rapid alienation of the public lands from the government, it occurs to me that the interest of this fund requires that the unselected balance should be selected on the earliest possible

opportunity. I am not now aware of any law of this State, having for its object the selection of this deficiency, and theresfore respectfully suggest the propriety of such legislative action as shall seem to you best fitted to attain the end sought." (Not in Record.) This report is addressed to the Legislature of the State of Michigan.

The Commissioner does point out some of the difficulties in the way of adjusting the swamp land grant, and quotations are made from this portion of the report, and are found on pages 226 to 227 of the Record.

Neither the message of Governor Wisner, the retiring governor, nor the message from Governor Blair, the incoming governor, to the Legislature of 1861 make any recommendation upon the question of providing a method of adjusting the swamp land grant; neither do they make any mention of the deficiency existing in the several grants, as mentioned in the report of the Commissioner of the State Land Office. In both messages, however, mention is made of the method of disposing of the swamp lands by the Legislature, for the purpose of constructing roads and ditches throughout the State, and suggestions made as to a modification of the then existing statutes on the subject, and questioning incidentally whether the method then in use was the best one for the disposition of the lands. (Documents 1 and 2, Joint Documents of Michigan for 1861.)

Evidently having in mind the report of the Commissioner of the State Land Office for 1860, Mr. French introduced in the Senate of the State Legislature, February 16, 1861, two measures, one entitled, "A bill to provide for selecting and locating the unselected deficiency existing in the quantity of lands due to the State of Michigan under the act of Congress approved May 20, 1826, and for any other land grant made by act of Congress to this State;" and the second, entitled "Joint resolution authorizing the Commissioner of the State

Land Office to adjust with the general government the conflicting claims existing between the general and State governments in relation to the several land grants made to this State, and secure patents for all unsettled balances due this State." (Senate Journal, 1861, page 478.) These measures were before the Senate at various times—the first one, for the selection of the deficiency, passing the Senate and passing the House, became a law in the form shown in Appennix No. 2. The joint resolution was lost, after being placed on its third reading before the Senate, by a vote of 12 years to 17 nays. (Senate Journal, page 732.)

So much of the messages of the Governors as referred to the disposition of the swamp lands under the then existing laws of the State was in the House of Representatives referred to the Committee on Public Lands. (House Journal, 1861, page 28.) Other proposed legislation relating to the same subject matter was from time to time referred to the Committee on Public Lands, and the committee was frequently requested to report upon the same subject. (House Journal for 1861, p. 267, 310, 348.) It was under the reference of the portion of the Governor's message, to which reference has been made, that the report printed in the Record (Exhibit 158, p. 222) was made, and it is quite clear from a mere casual examination of this report, and from this reference to its origin, that there was no intention on the part of the committee of attempting to show the state of the grant as between the United States and the State of Michigan. On the contrary, the sole purpose of it was to show to the Legislature the amount of lands at their disposal for the purpose of constructing State roads and ditches, and to show them the extent to which such roads and ditches had already been constructed, as appears by table A, which is not printed in the Record. It is worthy of notice that the statement of the condition of the lands in Clare county, in table B, where the lands in controversy in this case are situated, is as follows: Amount of swamp land in, 93,720.56 acres; amount patented, 59,960.08 acres, which is the same amount as stated in the report for 1857.

From the slightest examination of Act 123 of the laws of 1861. Appendix No. 2, it is apparent that it was not intended to confer upon the Commissioner power to relinquish any of the rights of the State of Michigan to such lands as it was justly entitled under the act of Congress of 1850, or of 1857 granting and confirming the swamp lands to the State, inasmuch as he is only instructed and authorized to select and locate the existing deficiency in the quantity of lands accruing to the State in conformity with the provisions of the several acts making the same, particular reference being made to the act of Congress under which the school lands were obtained. although the act contains a general clause directing him to select lands under any other grant. It must be borne in mind that the State of Michigan, as early as June 18, 1851, by the act of its Legislature had already made its selection of swamp lands, so far as it was within the power of the State to do so, and, as to the location of the lands, that was wholly beyond the power of the State, and hence beyond the power of the Legislature to confer any such authority upon the Commissioner. To ascertain, of course, as to whether there was a deficiency in the quantity, it must first be ascertained whether there was a definite number of acres of land granted to the State by the act of Congress. It would also seem to be apparent that a power to select and locate is not a power to relinquish the rights of the State to lands it already had obtained or was justly entitled to receive, any more than a power to sell is not a power to mortgage.

For a construction of use of word "selection" in a similar manner see *Wright vs. Roseberry* 121, U. S. 488, 512. It was proper, and it is possible that the Legislature intended that the Commissioner should proceed to urge the department at Washington to cause patents to issue, and thus conferred upon him some of the duties which, under the Act of Congress.

rested primarily in the Governor, but it would seem quite clear that the Legislature had no intention of authorizing the commissioner to in any manner modify, relinquish or abridge the rights of the State to any of the lands to which it was entitled, either under the swamp land grant or the others coming within the act of the Legislature, and such a relinquishment was necessary to carry out the methods of settlement suggested by Commissioner Hendricks in his letter of December 22, 1858 (Exhibit 23, p. 31), and it would seem a fair inference from the action of the Legislature in refusing to pass the resolution providing for a settlement of the conflicts, that they refused to act upon or accept the method of adjustment suggested by commissioner Hendricks in this letter. Clearly this was the understanding of the Federal Land Department that the Commissioner had no such power, as will be pointed out in referring to the reports of the departments later on. That the successive Commissioners of the State Land Office urged the claim of the State under the act of 1861 is conceded, but the proofs do not show that they attempted any acts by way of relinquishment.

Commissioner Lacey (Exhibit 159, p. 225), July 10, 1861, forwarded to the General Land Office the tabulated statement B, attached to the report of the committee of the House of Representatives above referred to. This is clearly an assertion of a claim that patents be issued for such lands as appeared to be unpatented, and to which the State was justly entitled, inasmuch as the same had been approved to the State as swamp lands inuring to it under the Act of Congress, and, so far as the lands in controversy in this suit are concerned, it was a demand by the Commissioner and a claim on the part of the State that it should receive its lands in the county of Clare by the list approved by the Commissioner in 1853, upon which plaintiffs now rely.

The report of the Commissioner of the State Land Office for 1862, states: "It is with great pleasure that I am able to re-

port that my proceedings under the law of 1861, in relation to the *unpatented swamp lands* have met with a prompt response from the present Commissioner of the General Land Office," and then goes on to state the number of acres for which patents have been received up to that time, (Record p. 228).

It is to be noticed here that the General Land Office is not aware that the Commissioner of the State Land Office has any authority to bring about an adjustment of this grantat least, has not authority to relinquish or waive the claim or rights of the State based on the approvals. The Secretary of the Interior, in his report for 1864 (Record, p. 174) calls attention to the discrepancy in the swamp selections in Michigan and the embarrassment which it had created between the State and the United States Government, and makes the following suggestion: "To remove the difficulty and enable the United States to give to Michigan a good title to the swamp tracts, and dispose of the residue or fast lands in such townships, it is necessary for the State to relinquish her title to the swamp tracts acquired under the old surveys, taking in lieu thereof an equal quantity of such lands described as swamp in the new surveys." As already pointed out, there was no statute of Michigan under which the Commissioner of the State Land Office had any power to relinquish the title of the State in the manner and for the purposes proposed by the general government, nor has it been pointed out that any such power has ever been conferred upon the Commissioner for this purpose. Certainly, it was never claimed by the Commissioner himself that he had any such authority under the act of 1861, and the foregoing suggestion of the Secretary of the Interior would seem to indicate that the department at Washington had no idea that he was possessed of such authority.

The remarks quoted from the report of the Commissioner of the State Land Office for 1865, from page 3 of the report (Record, p. 228), is taken from that portion of the report of

the Commissioner as relates to primary school lands, and has no reference whatever to the condition of the swamp lands or action in relation to them. But it is useful as showing that in the effort to adjust the slight deficiency of about 49,000 acres the department had been acting without results for nearly five years, inasmuch as the Commissioner states that "no selections on account of the deficiencies have as yet been made." And, in fact, the matter was not adjusted until 1872.

That the adjustment was not yet brought about in relation to the swamp lands, is clear by the statement of the Commissioner under the head of swamp lands, from page 6 of his report, which is quoted in the Record at page 229, where attention is called to the fact that no adjustment had been made in relation to the "Green Lands," so-called, that is to say, those lands for which the State was entitled to indemnity or scrip or warrant, as having been sold by the General Land Office prior to 1855 and 1857. The following sentence is also significant: "Fiften years have passed away since the passage of the grant, and the difficulty seems to be no nearer a proper adjustment, or being finally settled, than when it commenced."

The report of the Commissioner of the State Land Office for 1866 makes mention of the receipt of lists covering 230,000 acres of lands, which the Commissioner says, "were omitted in former lists on account of the difficulty of making the selections, by reason of the changes made between the old or fraudulent surveys in some sections of the State, and the resurveys" (Record p. 229.)

The report of the Commissioner for 1868 (Record, p. 314) uses this language: "The entire amount of swamp lands conveyed to the State by the act of Congress has been patented, with the exception of about 40,000 acres lying in Cheboygan and Houghton counties."

It would seem however, from a comparison of this report with those that preceded it, and the following report of 1870.

that the Commissioner was in error as to his computation, for he gives the "amount in" the county of Clare at the same figures which had been given in all the reports, commencing with table in 1857, as 93,720.56 acres. This was the amount which must have been computed on the basis of Ionia Approved List No. 1, which was approved in 1853. the lists approved in 1866, and known as Ionia Nos. 10 and 11, had any effect upon this amount, it should appear in this computation of the amount of swamp land approved within that county; and if the amount stated as the amount of swamp land was computed on the basis of the approved list of 1853, as it clearly was, the Commissioner was mistaken when he reports that the total amount had been patented, because the Record shows that, as to the lands in controversy at least, and as to a large number of other parcels, no patent has ever been received.

It is quite clear from the report of the Commissioner for 1870, that he has recognized his error in making the computations in the table attached to the report for 1868, which purported to show the condition of the swamp land grant up to January 1, 1868, for he says (Record p. 313), "As the swamp lands continue to hold so prominent a position in the resources employed for the development of the State by means of supplying the country with roads and ditches, and the settlers with homesteads, it has been deemed of great importance that a full and reliable statement of the amount and condition of these lands should be placed before the Legislature at this time, and accordingly such a statement has been prepared at great labor and with the utmost regard for accuracy, and which is the result of a complete footing and computation of all unpatented swamp lands belonging to the This statement will appear at the close of this report in a tabular form." An examination of this statement shows that the use of the word "unpatented" refers simply to the amount that had not been patented by the State of Michigan,

because it was only such lands that could be disposed of for the purposes of constructing roads and ditches or throw open to homestead and pre-emption settlements under the then existing laws. This table purports to show the condition of the grant up to December 1, 1870, and is tabulated under the following heads: "Counties," "Original amount," "Vacant," "Homesteads patented," "Homesteads licensed," "Amount sold for cash," "Amount sold on roads, etc.," "Amount reserved on roads, etc.," and "Other grants." From this statement the total amount is given at 5,794,308.57 acres, or nearly 60,000 acres less than the amount stated patented by the table attached to the report of 1868. comparison of the statement by counties will show a difference of amount stated in nearly every county in the State. With reference to the county of Clare, the amount shown as patented in that county is 77,252.62 acres, or a trifle less than 16,000 acres less than the amount stated in the table attached to the report for 1868.

In none of the subsequent reports of the State Land Commissioner are tables given which purport to show the amount approved or patented to the State. If any deduction can be made from these statements at all, so far as relates to the county of Clare and the adjustment of the grant in that county, it would appear that the Commissioners were claiming and relying, not upon the lists of 1866, but relying upon the lists approved in 1853, inasmuch as through all the reports where the amount approved is given in this county, it is the amount which must necessarily have been based upon the list approved in 1853. That there was a discrepancy in these several reports is noticed by the Commissioner himself in his report for 1871, extracts from which are found in the Record at page 248. The extract given is erroneous in that there has been an accidental omission after the word "acres." and before the word "showing," in which should be inserted the

following: "The report for 1870 gave the amount patented as 5,794,308.57 acres."

No mention of the progress of adjustment is made by the Commissioner in his report for 1875, although from an examination of the Record, at pp. 183, 189, 193, 196, 197, 282, 283, 384, it is evident that the Commissioner was industriously at work endeavoring to obtain further approvals and patenting of lands. An examination of these letters will show that Commissioner Clapp was not very successful in his efforts to reach an adjustment, and he expresses this and his lack of power to act in his report for 1876. The report quotes from the Commissioner of the General Land Office for the year of 1875, and the extract shows that there was yet unadjusted nearly a million and a half of acres of land. The State Commissioner says: "From an investigation recently made, I find that a large quantity of our swamp land has been disposed of by the general government. * * * I am convinced that a large amount in cash and indemnity land is now due to the State, and respectfully recommend that the Legislature provide, by proper enactment, for a complete adjustment of said swamp land grant." The Land Department thus recognizes two things: First, that the swamp lang grant had not been adjusted; and, second, that there was no law of the State of Michigan under which such an adjustment could be completely and properly made. This adjustment was incomplete in every county of the State. (Exhibits, 191, 192, pp. 284, 285.)

The report of the Commissioner of the General Land Office for 1877 recognizes the same condition of things, (p. 245, Record), "The act provides that it shall be the duty of the Secretary of the Interior to make accurate list and plats of the same and transmit them to the Governors of the States, and at their request to issue patents therefor. The provisions of the law have not been fully carried out. nor have the grants

to the several States been adjusted. Lapse of time makes the adjustment more difficult."

Similar statements will be found in other documents, some of which are quoted in the Record.

See Report General Land Office, 1878, p. 103, 104. Report General Land Office, 1882, p.9 (Record p. 245).

Report State Land Office, 1882 and 1886. Record p. 249.

Messages of Gov. Jerome and Gov. Alger. Record p. 250.

The table, made up from the reports of the Commissioner of the General Land Office, covering the period from 1855 to 1891, inclusive, shows that nearly every year during that period there have been lands patented or approved to the State, and commencing with 1880 an additional number of selections on the part of the State were added to the list already on file, so that the amount selected for the State and remaining unadjusted in 1887 was over a million and a half of acres (Record, p. 244).

The fact that some erasures and corrections were made at the request of the General Land Office in 1854 is considered by the Court of Appeals as tending to show that the lists were merely provisional. (Exhibits 98 to 109, p. 136 to 148.)

An examination will show that for the most part the errors are merely clerical and the notations such as show a conflict of rights by reason of prior sales, or subsequent locations and the like: The requests of the Commissioner were mere cautions taken to avoid litigation between claimants under the State and the United States.

That the practice of making erasures was found to be a bad one, we may infer from the fact that the diligence of counsel for defendants has only been able to discover the few letters referred to in 1854.

The remarks of the Court of Appeals (Opinion pp. 334, 344), concerning the effects of the new lists prepared by the Surveyor-General from the resurveys as "superseding" and "abrogating" former lists, show some confusion as to the facts.

October 4, 1852, Commissioner Wilson directs the Survevor General to transmit new lists in the towns resurveyed that season, "in explanation of the former ones; but you will be careful to designate them as having been made out in lieu of the former ones" (Exhibit 91, p. 133.) The Surveyor General neglects to do this in sending in a supplemental list within the Grand River district, and the Commissioner calls his attention to it. June 7. 1853. (Exhibit 83. p. 126.) The Surveyor General replies June 24, 1853 (Exhibit 92. p. 133), suggesting that the supplemental lists should be considered "a substitute for the original." October 29, 1853, the Surveyor General sends another list in the Grand River district, which he states "is intended to abrogate and supersede all lists of swamp lands heretofore made of townships contained within it." (Exhibit 93 p. 134.) From this time on the lists made from the new surveys by the Surveyor-General are so designated.

See Surveyor Generals List, Grand River No. 3. Exhibit 124, p. 175.

See Surveyor General's List, Cheboygan E., Exhibit 153, p. 213.

These lists were mere memoranda, from which the approved lists were made up by the Secretary of the Interior. None of the approved lists which it is claimed were made up from these new lists furnished by the Surveyor General contain any statement showing that there was any intention to "supersede" or "abrogate" former approved lists.

See Ionia, No. 10, Exhibit 127, p. 178. Traverse City, No. 22, Exhibit 134, p. 184. Ionia, No. 20, Exhibit 140, p. 198. Ionia, No. 11, Exhibit 154, p. 215.

It can hardly be contended that a list prepared by the Surveyor-General has the effect of setting aside an approved list made by the Secretary of the Interior. The Secretary could not delegate the functions of a tribunal imposed by the granting act.

It is claimed that the State has accepted lists and patents therefor founded on the resurveys, and therefore is estopped.

May 26, the Commissioner transmitted to the Governor of Michigan, a certified copy of Ionia Approved List, No. 10, and asked an acknowledgment and the usual request for patents (Exhibit 128, p. 180.) The Governor replied May 31, 1866, (Exhibit 129, p. 180) requesting patents to issue. The patent was subsequently issued and bears date, June 21, 1866 (Exhibit 130, p. 181).

Similiar transactions took place as to Ionia Approved List, No. 11, which was approved June 9, 1866, and patented December 26, 1866 (Exhibits 154, 155, 156, p. 215, 220).

It is to be noted that none of these documents give any intimation that the effect was to be that any former lists were to be set aside or abrogated by these proceedings. On the other hand such information as is contained on the face of the papers show the lists to have been made up on the basis of the State's claims: Ionia, No. 11, contains this certificate, "This is to certify that the foregoing tracts of land in the Ionia, Michigan, district were all duly selected and reported to this office as swamp land, prior to the date of the confirmatory act 3d March. 1857." (p. 217.) See also Traverse

City, No. 22, (p. 186) for a similar certificate. Lists Ionia, No. 10 and 20, (p. 179 and 198) are certified to have been made up from the "field notes" "and found therefrom to be swamp and overflowed lands."

From the foregoing review of the facts surrounding the alleged estoppel it will be seen that the Commissioners of the General Land Office in the first instance pursued the arrangement made between the Land Department of the United States and the Legislature of the State of Michigan in selecting the land by the field notes of the surveys in the office of the Surveyor-General, and approving the selections made from those field notes, and transmitting the approved lists with the maps to the Governor of the State of Michigan. The State of Michigan had a right to rely upon the approved lists so made and transmitted as conveying to the State of Michigan, in connection with the grant, the complete title to the land named in such lists, with the same force and effect, to all intents and purposes, as if the patents therefor had already been issued and transmitted to the Governor. In all these things, after the arrangement had been made between the Land Department and the Legislature, the State of Michigan was necessarily quiescent. It had nothing to do with reference to the selections. It could not compel the Land Department to act. The Land Department of the United States acted upon its own volition, and by no other. It will be further seen from the corresponence between the Land Department and its own officers that the Land Department determined, without any consultation or consent of the State of Michigan, upon a course of conduct with reference to the lists of land made from resurveys. We have not disputed the right of the United States, through its Land Department, to make as many surveys of its public lands as it might choose to do for the purpose of subdividing the townships into sections and establishing the corners of those sections, and of the quarter posts on the lines of those sections, with a view to make the surveys more

perfect or correct them in that respect, or to supply any deficiency in such surveys, but this could be done without making new lists of the swamp lands in the townships resurveyed; and unless such lists were made of additional lands which under the grant inured to the State of Michigan, the Land Department would have no right to make such new lists, so as to deprive the State of Michigan of the lands which had already been approved to it, or which had been confirmed to it by the act of March 3, 1857.

It will further be observed that the Land Lepartment assumed to make out new selections from the lists made from the resurveys of the townships, and to force their construction of those resurveyed lists as being in lieu of, and superseding all prior lists upon the State of Michigan. The Land Department was in a position to force this construction upon the State, inasmuch as the State could not compel them to pursue a different course, or to pursue a course, agreed upon between the Land Department and the State when a basis of selection was agreed upon. The plaintiff claimed that such enforced construction could not prejudice the right of the State, that it was in violation of the law, inasmuch as the subject matter had passed by the approval of the lists and the confirmatory Act of Congress beyond control of the Land Department of the United States. In this respect the action of the Land Department was quite similar to that pursued by the Commissioner of the Internal Revenue, enforcing its construction of the law upon the party who dealt in proprietary stamps, and we think the case of Swift Company vs. United States, 111 U. S., 22, applies with great force to the case now under consideration, and under the circumstances there could be no estoppel against the State from claiming what legally and justly belonged to it under the grant and identification by the approved lists.

In that case there was a continuous dealing between the wift Company and the Internal Revenue Bureau of the

United States from 1870 to 1878. The Swift Company were manufacturers of matches; furnished their own dies, and gave the required bonds under the statute in ordering stamps, which order was of a stated value. The Commissioner from the commencement held that the amount allowed by statute as commissions paid in stamps and was to be not money. All business between the parties was transacted and all accounts stated and adjusted by the accounting officers upon that basis.

The Court of claims held that the facts showed an acquiescence by the claimant in the construction of the statute by the Commissioners, and such repeated settlements and voluntary receipts of stamps in payment of their commissions, in lieu of money, was such as precluded them from recovering. and gave judgment in favor of the United States. judgment the Swift Company appealed. The argument was on the following points: First, whether the former construction of the statute was correct. Second, whether the long acquiescence of the company in the construction given to the statute by the Commissioner, and its frequent and regular settlement of its accounts on that basis, and acceptance of same in lieu of money, precluded it from disputing the legality of the transactions Third, what was the effect of the failure to protest against the settlements which it made under the rulings of the Commissioner.

The opinion of the court sets out the course of dealing under the statute, showing that payment of the commissions had been made in stamps, and that receipts therefor and settlements had been frequently had; that the accounts were made out by the claimant monthly on blank forms prescribed and furnished by the Commissioner, in which the United States were debited with all items of money remitted and with commissions calculated on each remittance at ten per cent, and credited with the balance from previous month, and stamps received to order in the interval, and with the balance due the United States. This account was, by a memorandum at the

foot, stated to be correct, complete and true, and signed by The opinion states: "It clearly appears that the claimant. the Internal Revenue Bureau had at the beginning deliberately adopted the construction of the law upon which it acted through its successive commissions, requiring all persons purchasing such proprietary stamps to receive their statutory commissions in stamps at their face value instead of in money; that it regulated all its forms, modes of business, receipts, accounts and returns upon that interpretation of the law; that it refused on application prior to 1866, and subsequently to modify its decision that all who dealt with it in purchasing these stamps were informed of its adherence to this rule; and finally that conformity to it on their part was made a condition without which they would not be permitted to purchase stamps at all. This was in effect to say to the appellant that unless it complied with the exaction it should not continue in business; for it could not continue business without stamps. and could not purchase stamps except upon the terms prescribed by the Commissioner of the Internal Revenue. question is whether the receipts, agreements, accounts and settlements made in pursuance of that demand and necessity were voluntary in such sense as to preclude the appellant from subsequently insisting on its statutory rights. We cannot hesitate to answer that question in the negative. The parties were not no equal terms. The appellant had no choice. The only alternative was to submit to an illegal exaction or discontinue its business. It was in the power of the officers of the law, and could only do as they required. Money paid or other value parted with under such pressure has never been regarded as a voluntary act within the meaning of the maxim, "volenti non fit injuria."

Many cases are cited supporting the principle enunciated. "A rule of that character deliberately adopted and made known, and continuously acted upon, dispenses with the necessity of proving in each instance of conformity that the com-

pliance was coerced. This principle was recognized and acted upon in *United States vs. Lee*, 106 U. S., at page 200, where it was held that the officers of the law have established and acted upon a rule that payment would be received only in a particular mode, contrary to the law, dispensed with the necessity of an offer to pay in any other mode, and the party thus precluded from exercising his legal right was held to be in as good condition as if he had taken the steps necessary to secure his rights."

In the case now under consideration the fact that the State had early adopted a policy not to sell its swamp lands until it had obtained a patent therefor from the United States, which policy continued to be acted upon by the State until at least 1883, the method adopted by the Land Department, in refusing to give patents for the lands listed and approved where there had been a resurvey either contemplated or made, operated with peculiar hardship upon the State of Michigan. was anxious to receive patents under the grant for any lands due to it in order that such land might be disposed of to actual settlers, or for the purpose of the trust imposed by the act of September 28, 1850, in draining and reclaiming the lands, by the construction of State roads, and otherwise. short, the State was compelled to receive what the Land Department at Washington saw fit to patent to it, and this it did without relinquishing any of its rights to demand a patent of the lands approved to the State, or of the right to dispose of such lands. The same principle declared in the case of the Swift Company vs. United States is stated by Mr. Bigelow in his work on estoppels, fifth edition, at page 686, where he lays down the general principle that when the situation in question had been practically forced upon a party by his opponent's conduct, he will not be bound to stand by it; citing Potter vs. Brown 50 Mich., 436.

Branson vs. Wirth, 17 Wall., 32, is a case which, we think, is in point here. The action was ejectment against

Branson and another to recover the northeast quarter of section 18 in a certain township in Fulton county, Illinois. made title under a patent from the United States to one Leonard, dated February 20, 1868. The defendants claimed under a tax title issued under the laws of Illinois, but as public lands could not be taxed, the defendants were obliged to show that at the time the title under the tax deed originated the government title had been extinguished. To do this the defendants gave in evidence, from the records of the General Land Office, an exemplified copy of a military land warrant for 160 acres of land, issued to Giles Edgerton in 1817, the location thereof in his favor upon the lot in question on the 10th day of January, 1818, and a patent for the lot dated the same day. Edgerton executed a deed on the 20th of July, 1819, to one Thomas Hart, not for the northeast quarter, but far the southeast quarter of section 18. It further appeared that the United States had granted a patent to one James Durney, dated January 7, 1818, for the southeast quarter of section 18, which was prior in time to that to Edgerton. The defendants contended that the word "southeast" was written by mistake for the word "northeast." In rebuttal the plaintiff gave in evidence deeds for the southeast quarter from Hart to Hunt, May 12, 1824; from Hunt to Clemson, April 7, 1825; from Clemson to Shaw, October 20, 1829. He also gave in evidence an act of Congress approved March 3, 1827, for the relief of the legal representatives of Giles Edgerton, by which it was enacted that the legal representatives or assignee of Giles Edgerton be authorized to enter with the register of the proper land office any unappropriated quartersection of land in lieu of the quarter-section patented to said Giles on January 10, 1818, which had been previously patented to James Durney, and upon such entry a patent shall issue to such representative or assignee for the quarter-section. It was proved that Shaw did enter another lot in 1838 pursuant to that act. The court instructed the jury that defendant had

not shown outstanding title to the lot in question, either in Giles Edgerton or any one claiming under him, and that the plaintiff was entitled to recover. In support of this ruling the plaintiff claimed: First, that Edgerton's patent granted the southeast quarter, and that the title to the northeast quarter remained in the United States until the issue of the patent to Leonard in 1868; and that the defendant was estopped from setting up a title in Edgerton; that defendants could assert for or under him no better title than he could for himself or his grantees. And the plaintiff argued that Edgerton by deed to Hart of the southeast quarter was estopped from claiming that his patent granted him the northeast quarter, and that Edgerton's successive grantees were bound and estopped by the recitals and facts that estopped Edgerton. They also claim that they were estopped by the act of Congress permitting Edgerton to enter another quarter-section in lieu of the southeast quarter. Mr. Justice Bradley delivered the opinion of the court, and after discussing the facts upon which they relied for an estoppel, said: "It is supposed that Edgerton and his assigns are estopped by the fact that the government was induced to give Edgerton's grantee another lot in consequence of the declaration contained in his deed to Hart. This may be ground for an equitable estoppel, not a legal one, and therefore not available in an action of ejectment where the title is in issue." And he further said: "Even were it otherwise, and if the government could in any aspect of the case claim the benefit of the legal estoppel, it would be prevented from doing so by its own patent granted to Edgerton. That would present the case of estoppel against estoppel, which Lord Coke says 'setteth the matter at large.' No one can set up an estoppel against his own grant. Whoever else, therefore, might set up an estoppel against Edgerton's title to the lot in question, the government could not do so. Its own patent would stand in the way. And whatever the government could not do, its subsequent grantees could not do." We

contend here that the government of the United States never has claimed an estoppel as against the State of Michigan. The facts recited above show conclusively that no such claim was ever intended to be made; that they have always recognized some right in the State under the approved list to the land embraced therein; but were it not so the grant and the selection by the Secretary of the Interior operated to convey the title to the State as fully as if the patent had issued, and precludes the United States by its own grant from asserting an estoppel as against the State. Nor is the State of Michigan estopped on account of its silence with reference to its claims to the swamp lands embraced in the Approved List Ionia No. 1. There was nothing which called upon the State to act in asserting its rights. The delay was occasioned by the Department at Washington, I presume, on account of the great pressure of business before that department. Certainly, it was the duty of the Secretary of the Interior to act, and nothing which the State of Michigan could do could compel the Secretary to act sooner than he chose to act. "No principle is better settled," says Mr. Justice Strong, in Railroad Company vs. DuBois, 12 Wall., at page 64, "than that a party is not estopped by his silence, unless it has misled another to his hurt." There is no evidence in this case that the State of Michigan has misled any one. The swamp land grant gave public notice to all persons, and they were obliged also, in dealing with the lands covered by the grant, to take notice of the selections made and approved by the secretary of the Interior, so that the title became perfected to the list of lands embraced in it. But further than this, there has been a claim made by individuals—one of them the grantor of the defendant of one of the parcels involved to these lands in suit, as public lands subject to entry and sale by the United States. and the Secretary of the Interior had decided that they were not subject to entry, and for the very reason that they were claimed by the State of Michigan as swamp lands by grant

under the act of Congress. The State of Michigan was not a party to this contention, and had no knowledge of it, so far as the Record shows, and was not obliged to take any action in the premises to protect its rights. The fact appears from the Record that the land was listed by the Surveyor-General, approved by the Secretary of the Interior before the act of March 3. 1857, and that the resurvey and listing under which the Land Department undertook to deprive the State of Michigan of its title was not made until after the confirmatory act. It is needless to argue that the Secretary of the Interior had no power to set aside the title of the State of Michigan to these lands and offer them at public sale in 1869. If the defendants were misled at all, they were misled by the Land Department, and not by the State of Michigan: (Exhibits 151, 151 A, p. 209-213.)

The position of the plaintiff in this suit claiming title through the State is farther supported by the case of Hornsby vs. United States, 10 Wall., 237. That was a case of a Mexican land grant, in which, after the Governor had made the grant, it was subject to the approval of the Departmental Assembly, and such an approval was a condition precedent to the vesting of the title. The court said, "With such approval the grant became, as it was termed in the regulations 'definitively valid,' that is, it ceased to be defeasible, and the estate was no longer liable to be divested except for proceedings for breach of its other conditions. Besides, it was the duty of the Governor, and not of the grantee to submit to the Assembly grants submitted by him for their approbation. His neglect in this respect suspended the definitive validity, as it was termed of the grants; that is, it prolonged the liability of the estate to be defeated by the act of the Assembly and of the Supreme Government thereon, to which the matter was referred in case the approval of the Assembly was not obtained, and no other consequence followed. His neglect was not permitted to operate to divest the grantee of the estate already

vested in them." The principle to be drawn from this opinion is, from the analogy which the facts in this case bear to that, that the grant was made by Congress, the same as in the Hornsby case, was made by the Governor, but the lands were to be selected and approved by the Secretary of the Interior, and the lands in that case were to be submitted to the Departmental Assembly for approval. In this case, like that, upon approval the land became definitively valid. It ceased to be defeasible. The estate granted to the State of Michigan was no longer liable to be divested, and likewise it was the duty, under the arrangements made between the Secretary of the Interior and the State of Michigan, for the Surveyor-General to submit the lists of the lands which would pass under the grant to the Secretary of the Interior for his approval, and it was not the duty of the State to do so. His neglect, or the neglect of the Secretary of the Interior, to pass upon the selections cannot be urged as laches upon the part of the State, nor as laying the foundation for an estoppel for not asserting rights under the grant. Independent of the act of March 3. 1857, until the lists made out by the Surveyor-General were approved by the Secretary of the Interior, the particular parcels of land granted were not ascertained, and were subject to changes which the Secretary of the Interior might make in carrying out his duty to determine what lands did pass by the grant. No other consequences followed.

Henshaw vs. Bissell, 18 Wall., 255. This was an action of ejectment for the possession of certain real property in the county of Butte, in the State of California. Both parties claimed the demanded premises under patents of the United States, issued upon a confirmation of grants given by the Mexican government. The plaintiff claimed under a junior patent issued under a prior grant, and defendant claimed upon a senior patent issued upon a subsequent grant not confirmed. Both patents cover the premises in controversy, and the question was which of the two original concessions gave the better

right to the premises. In deciding the case, Mr. Justice Field, in commenting upon the prior grant with the later patent, said: "The grant of land thus identified, or having such descriptive features as to render its identification a matter of absolute certainty, entitled the grantee to the specific tract named. His title, it is true, was imperfect in its character, and subject to various conditions, but when approved by the Departmental Assembly it became, in the language of the regulations of 1828, 'definitively valid,' and the estate granted was not afterwards liable to be divested except by regular proceedings on denouncement. The power of the Governor over it had ceased. He could neither revoke the grant nor impair the interest of the grantee by any attempted transfer to others." It was also insisted that the plaintiff claiming under the elder grant of the demanded premises was estopped by the conduct and declarations of his predecessor, the claimant before the Land Commissioner in claiming land under his grant situated in a different locality. And the court held after stating the grounds upon which the estoppel was based, that there was no case for the application of the doctrine of equitable estoppel. "For its application there must be some deception in the conduct or declarations of the party estopped, or such gross negligence on his part as amounts to constructive fraud. An estoppel in pais is sometimes said to be a moral question, and certain it is that to the enforcement of an estoppel of this character, such as will prevent a party from asserting his legal rights to property, there must generally be some degree of turpitude in his conduct which has misled others to their injury. Conduct or declarations founded upon negligence of one's rights have no such ingredients, and seldom work any such result. There are cases, it is true, where declarations may be made under such peculiar circumstances, that the party will be estopped from denying any knowledge of his rights; but these are exceptional and do not effect the correctness of the general rule as stated." In this case there

are no peculiar circumstances which call for the application of the doctrine of equitable estoppel to prevent the State of Michigan from claiming its rights to the land selected and approved. The title passed to the State upon approval of the lists Ionia No. 1, and the map thereof prepared and transmitted to the Governor of the State, and, as was held in the case just cited, this approval, although the patent had not been issued, had all the force and effect of a patent.

See also *Hardin vs. Jordan*, 140 U. S., 371, which we consider a case in point.

The case of Brant vs. The Virginia Coal & Iron Company et al., 93 U.S., 326, was a case where it was claimed that the plaintiff was estopped from claiming title to the land in question by virtue of the relation which those through whom he claimed bore to the legal title. On page 332, of that case, it was said by Mr. Justice Field, "The disposition of the case depends upon the construction given to the devise of Robert Sinclair to his widow, and the operation of the foreclosure proceedings as an estoppel upon the complainant from asserting title to the property." It appears that the widow of Robert Sinclair, in July, 1839, having a life estate in the premises, executed a deed thereof to the Union Potomac Company for the consideration of \$1,100. As security for the payment of the consideration she took at the time from the company, its bond and a mortgage on the property. This bond and mortgage were assigned to the complainant and Hector Sinclair, the latter a son of the widew, in consideration of \$100 cash, and the yearly payment of the like sum during her life. Previous to this time Brant and Hector Sinclair had purchased the interests of all the other heirs except Jane Sinclair, and such purchase is recited in the assignment of the mortgage, as is also the previous conveyance of a life interest to the company. Afterwards Brant and Sinclair instituted suit for the foreclosure of the mortgage and sale of the property, and the same was sold under the decree and bid off by

one Patrick Hammill, who thus succeeded to all the rights of the Union Potomac Company. The defendants derived their title from Hammill. Brant having acquired the interest of Hector Sinclair, brought the present suit to restrain the company from mining and extracting coal, etc., from the land. It is claimed by the defendants that Brant and Sinclair were estopped from setting up that the widow only conveyed a life interest by the fact that they had foreclosed the mortgage while they were owners of seven-eights of the reversion, and as such owners they were prevented from taking a mortgage upon the life estate or purchasing the one already executed. The court held that the purchaser was bound to take notice of the title. He was directed to its source by the pleadings of the case; that the doctrine of careat emptor applies to al judicial sales of this character; the purchaser takes only the title which the mortgagor possessed. * * * The court said, "It is difficult to see where the doctrine of equitable estoppel comes in here. For the application of that doctrine there must generally be some intended deception in the conduct or declarations of the party to be estopped, or such gross negligence on his part as to amount to constructive fraud, by which another has been misled to his injury. In all this class of cases,' says Story, the doctrine proceeds upon the ground of constructive fraud or of gross negligence, which in effect implies fraud. Therefore, when the circumstances of the case repel any such inference, although there may be some degree of negligence, yet courts of equity will not grant relief. It has been accordingly laid down by a very learned judge that the cases on this subject go to this result only, that there must be positive fraud or concealment, or negligence was so gross as to amount to constructive fraud. * * * The element of fraud is essential either in the intention of the party estopped, or in the effect of the evidence which he attempts to set up." (Citing authorities.) And it would seem that to the enforcement of an estoppel of this character with respect

to the title of property, such as will prevent a party from asserting his legal rights, and the effect of which will be to transfer the enjoyment of the property to another, the intention to deceive and mislead, or negligence so gross as to be culpable should be clearly established. * * * It is also essential for its application with respect to the title of real property that the party claiming to have been influenced by the conduct or declarations of another to his injury, was himself not only destitute of knowledge of the true state of the title, but also of any convenient and available means of acquiring such knowledge. Where the condition of the title is known to both parties, or both have the same means of ascertaining the truth, there can be no estoppel." We insist that the purchasers at the public sale of land at Ionia stand in the same situation as purchasers at judicial sales; that the doctrine of careat emptor applied to them, and that they received no better title under such sale than the United States had, which was no title.

In Ketcham vs. Duncan, 96 U. S., page 666, it was said: "Moreover, it is necessary to notice who sets up this plea of estoppel. An estoppel in pais does not operate in favor of everybody. It operates only in favor of a person who has been misled, to his injury, and he only can set it up."

In Sturm vs. Boker, 150 U. S., 312, the question of estoppel in pais was again under consideration, and on page 333 the court said: "It is next urged, and the court below seems to have taken the same view of the matter, that the complainant is estopped from denying his responsibility for the loss of the goods, because of alleged statements made by him as a witness in the suits upon the insurance policies. It is claimed that in those suits he testified under oath that he was the owner of the goods, and thereby precluded himself from asserting anything to the contrary in this case, under the wise and salutary doctrine which binds a party to his judicial declarations, and forbids him from subsequently contra-

dicting his statements thus made. We do not controvert the soundness of this general rule as laid down in the cases cited by the defendants. * * * This language did not mislead or induce either the defendants or the insurance companies to alter or change their position in any respect whatever, nor influence their conduct in any way. Both the defendants and the insurance companies had the written contracts before them, and were presumed, as a matter of law, to know their legal effect and operation. What the complainant said in his testimony was a statement of opinion upon a question of law where the facts were equally well known to both parties. Such statements of opinion do not operate as an estoppel. If he had said in express terms that by that contract he was responsible for the loss, it would have been, under the circumstances, only the expression of an opinion as to the law of the contract, and not a declaration or admission of a fact such as would estop him from subsequently taking a different position as to the true interpretation of the written instrument. In Brant vs. Virginia Coal and Iron Co., 93 U. S., 326, 327, it is said: 'Where the condition of the title is known to both parties, or both have the same means of ascertaining the truth, there can be no estoppel."

Certainly, the purchasers at the land sale at Ionia had full means of ascertaining the true condition of the title to the land in question. The least inquiry would have led them to the knowledge of the fact that they were selected and approved to the State as swamp land, the legal effect of which they were bound to know or ascertain at their peril.

So, too, it is said in Everett & Stroud on Estoppels, page 310, that "a representation does not operate as an estoppel if the party making it is legally incapacitated from entering into the obligation from which the estoppel might otherwise have arisen." This principle applies to the case of a public officer whose acts are circumscribed by law, and who is not clothed

with discretion and authority to make the representation, or from entering into the arrangement.

In accordance with this principle it was held in the case of Crane vs. Reeder, 25, Mich., 303, which was a case founded upon an escheat of lands to the State, that it was not estopped from claiming the land as an escheat, because it had taxed the lands and sold the same for delinquent taxes, and it was said: "The doctrine that the State would waive its rights to its lands, or estop itself form claiming them by taxing them to an occupier, and taking proceedings to enforce payment of the taxes, would be rather startling to the officers having charge of the public domain, and would indicate an easy mode in which trespassers might convert their trespass into a complete ownership. * * * If the State sells for delinquent taxes, it warrants nothing and represents nothing; the purchaser takes the risk, not only of the original authority to tax, but also of the regularity of all the proceedings. Now, to entitle the party to insist upon an estoppel, he must be able to show that the other party has done something or represented something, which has had the effect to deceive and misled him, and which would render it inequitable for the right of such other party to be now enforced against him. If we inquire in this case, what the State has done which has mislead or deceived Reeder, it will hardly be replied, that taxing the land to him could have that effect by making him suppose the land his own; for taxation does not imply ownership in the person taxed, and, if it did, we could not presume the party himself to be so ignorant of his rights as to be deceived by it. Nor can it be urged that the tax-deed to Reeder works an estoppel, for such a deed is always understood as giving no right but such as comes from the proceeding itself; the maxim is, caveat emptor. The State, as before remarked, gives no warranty, holds out no promises, and makes no representations."

It is apprehended that the case of the State vs. The Flint

& Pere Marquette Railway Company, 89 Mich., 481, may be referred to as affecting the merits of this case upon the subject of estoppel, but upon well recognized principles it cannot The plaintiff in this case was not a party to that suit, which was instituted after its grantor became a purchaser of the lands in question. The decree in the case did not effect him. He had no right to appeal, neither was he a party in any sense to the litigation. The subject matter of the two suits was different. The ground upon which persons standing in the relation to what is termed privity, which denotes mutual or successive relationship to the same rights of property in litigation, are bound by the proceedings to which he was a party, in that they are identified with him in interest. The plaintiff in this case had no opportunity to make a defense in that it could not control the proceeding nor appeal from the judgment. It could not adduce testimony, nor crossexamine witnesses adduced on either side. Persons not having these rights are regarded as strangers to the cause.

The case of Litchfield vs. Goodnow, 123 U. S., 549, is directly in point. That is a case where the defense set up that the plaintiff was estopped from claiming to recover the amount of taxes assessed against property which was illegally assessed by an adjudication in another case, namely, The Homestead Company vs. Valley Railroad Company, 17 Wal., 153. The Homestead Company case was similar in all respects to the one then before the court, to which the plaintiff was not a party, and the court held that it was no estoppel. The reason of the court in that case is conclusive in this. The court in deciding that case said: "In the condition of the parties to the record during the whole course of the litigation between the Homestead Company and those who were named as defendants, Mrs. Litchfield had no right to make a defense in her own name, neither could she control the proceedings, nor appeal from the decree. She could not in her own right adduce testimony or cross-examine witnesses; neither was she

identified in interest with any one who was a party. She owned her lands; the parties to the suit owned theirs; her rights were all separate and distinct from the rest, and there was no mutual or successive relationship between her and the other owners. She was neither a party to the suit, nor in privity with those who were parties; consequently she was in law a stranger to the proceedings and in no way bound thereby. As she was not bound, the Homestead Company and its assigns were not. Estoppels to be good must be mutual."

See also Lake Shore & Michigan R. R. Co. vs. People, 46 Mich., 193.

Furthermore, the entire claim of the State as against the railroad company, seems to have been based on the field notes and plats of survey, and none of the lands seem to have been approved to the State, nor included in any Surveyor-Generals lists filed so as to come under the act of March 3, 1857. No proof of the actual character of the land was made. The case therefore did not present facts from which the court could find that the lands were withdrawn from the operation of the railroad grant.

It is the settled law of Michigan, that under its statutes title to land cannot pass by estoppel *in pais*, nor can an equitable defense be set up to defeat the legal title.

Ryder vs. Flanders, 30 Mich., 336.

Under the statutes of frauds which has always since the formation of the State been incorporated into the body of our laws, title to real estate can only be created or conveyed by deed.

Hayes vs. Livingston, 34 Mich., 383.

VII.

THE TAX TITLE ACQUIRED SUBSEQUENT TO THE COM-MENCEMENT OF THIS SUIT, AND WHILE THE SAME WAS PEND-ING, WAS NOT ADMISSIBLE UNDER THE PLEA IN THIS CASE.

There can be no question but what the admission of this deed was erroneous, and that the deed should have been excluded. Such is the practice, as decided by the Supreme Court of Michigan, in actions of ejectment. If any advantage was sought by this deed it should have been reached by a plea of *puis darrein continuance*.

Jennings vs. Pockham, 99 Mich, 253. Jenney vs. Potts, 41 Mich., 52. Buell vs. Irwin, 24 Mich., 149. Hurd vs. Raymond, 50 Mich., 369.

VIII.

THE FILES AND RECORDS RELATING TO THE CASES OF UNITED STATES VS. NICHOLSON, AND UNITED STATES VS. BREVOORT, AND CORRESPONDENCE RELATING TO THE SAME, SHOULD HAVE BEEN ADMITTED IN EVIDENCE.

The questions as presented relate to the offer of the plaintiffs to put in evidence Exhibit 175A (Record p. 259), being the records and files in the case of the *United States vs. Henry Nicholson et al.*; Exhibit 175B (Record, p. 264), being the records and files in the case of the *United States vs. Henry Brevoort et al.*; Exhibit 176 (p. 271), letter of Hon. J. M. Howard to the Secretary of the Interior, dated December 13, 1850, reciting the nature of the proofs presented on the trial of the two cases referred to; and Exhibit 177 (p. 272), a letter of United States District Attorney Bates, dated February 10, 1851, to the Hon. James L. Conger, member of Congress elect; and Exhibit 178 (p. 273), a letter from United States District Attorney Bates to Commissioner But-

terfield, dated February 11, 1851. Both of the letters of Mr. Bates detail the course and probable results of the trials of the cases above mentioned.

The defendants had offered, and the same had been admitted in evidence, the letter of Lucius Lyon, Surveyor-General, dated July 10, 1849, addressed to Commissioner Butterfield (Exhibit 73, p. 88), stating in substance that from the examinations made by William A. Burt during the past three months that the field notes returned to his office by Henry Nicholson and others of surveys made under contracts executed in 1838, were fictitious and fraudulent, and that Mr. Burt had examined the districts between towns 17 and 24 north, lying west of the principal meridian, and was still in the field. But from the returns made by Mr. Burt, the surveys of all the districts examined had proved to be fraudulent. They also relied upon the report of Surveyor-General Lyon for 1849, extracts from which are found in Exhibit 74, p. 89, and attached to this report is a detailed statement of the examinations made by Mr. Burt, referring to the Nicholson and Brevoort contracts, and several others. The greater portion of it is found in table N, printed in the Record at pages 94 and 95.

It is not clearly defined in the record the grounds upon which the defendants were allowed to introduce his sort of proof, but it would seem to be that the pursose was to show that the surveys of Nicholson, which covered the lands in controversy in this case, as also the surveys made by Brevoort and others, were fraudulent in fact, and we suppose argue from that either that the surveys were in fact no surveys at all by reason of their fraudulent character, or that it was competent for the Secretary of the Interior to set aside lists founded on such surveys as lists founded upon a fraudulent suggestion. If it was the purpose of the defendants to show that the surveys were in fact fraudulent, without reference to the question as to whether inquiry in this regard was not concluded by the act subsequently taken

by the Commissioner, it would certainly seem to be competent to receive the proof offered, inasmuch as it had a direct tendency to controvert the statements contained in the letter of Surveyor-General Lyon, and in his report founded upon the report of Deputy Surveyor Burt. In each of these cases the action was founded upon the contract made for surveying the towns therein described, and the bond made in pursuance of such a contract, the plea in each case being substantially one of performance, so that the issue was squarely raised as to whether or not the surveys had been made in accordance with the terms of the contract and the obligation of the bond. In each case the matter was tried before a jury, submitted to the jury by the court, and the jury returned a verdict for the defendants, thus finding that there had been a performance by them of their contract, and thus they had fulfilled the obligation of the bond given in pursuance of the Such is the purport of the letter of Mr. Howard, contract. and of the two letters of Mr. Bates, in which the latter gives it as his opinion that even though a new trial might be ordered by reason of some rulings of the district judge of which he complained, still the result eventually reached would be that the defendants would be found to have performed their contracts.

As already pointed out, it would seem as if the whole inquiry was concluded by the action of the Secretary of the Interior, so far as relates to the lands in controversy in this suit, in listing the lands and approving the same to the State in 1853, inasmuch as that must represent his final judgment in the matter, and the testimony upon which he acted and arrived at that conclusion would seem to be immaterial. But it is the claim, as we understand it, of the defendants that the Secretary in this case acted upon the fraudulent suggestion, and therefore that it was competent to inquire into it at a subsequent period. It has already been pointed out in an earlier period of this brief that it is not every suggestion or allegation of fraud that can be examined into, or it would lay the

foundation for setting aside a judgment regularly had. appear that the frauds complained of were in fact before the court, and necessarily included within its inquiry made at the time, and that the frauds here complained of were such as were known to the Secretary of the Interior at the time he acted in 1853, then all inquiry into the nature or character of these frauds, or an attempt to set aside the judgment of the Secretary of the Interior founded upon them, is deemed to be concluded by the judgment of the Secretary of the Interior, as expressed in his approved list; and in any event such evidence is not admissible in ejectment. But, granting for the purposes of the argument what seems to have been in the mind of the court in ruling that the evidence offered by the defendants was admissible, and allowing it to be read in evidence, that it was proper to inquire into the allegations of fraud in relation to the evidence upon which the Commissioner acted, it would seem to be proper, by way of rebuttal, to show that the evidence presented to the Secretary of the Interior was not fraudulent, and, as sustaining that view, it would seem to be of considerable weight the fact that the very allegations of fraud upon which defendants now rely had been tried before a regularly constituted judicial tribunal, and one of high standing and great dignity, and as a result of such a trial, a verdict had been found in favor of the defendants, establishing the fact that the charges of fraud by them in the execution of their work were untrue in fact; and further, that this proofthis finding of a properly constituted court—was laid before the Secretary of the Interior before he acted in approving the lands in 1853. In other words, it would seem to have a clear tendency to show that the Secretary was not deceived in any manner, but notwithstanding the allegations of fraud, he had examined the matter and concluded that the verdict reached by the jury, under the direction of the United States Court for the Eastern District of Michigan, was correct.

If it was proper to go into the matter at all for any reason,

it would certainly be proper to present to the court all of the matter upon which the Secretary of the Interior must have acted. That the Secretary was in possession of these facts is shown by the letters of Mr. Howard and by the letters of Mr. Bates.

The rejection of this evidence, offered on the part of the plaintiff in error in rebuttal, was clearly erroneous, if that of defendants was admissible, and the evidence should have been admitted.

IX.

We believe that the foregoing discussion has demonstrated that the title to the lands in controversy passed to the State of Michigan under the terms of the Act of Congress of September 28, 1850, which was a present grant, wanting but identification to attach to particular parcels; that this identification was made complete by the act of the Secretary of the Interior in listing the lands in Approved List Ionia No. 1, under date of October 27, 1853, and the transmission of this list to the Governor of the State of Michigan, January 13, 1854, and the preparation of a map upon which said lands were colored red, under date of March 9, 1854, and the transmission of said map to the Governor of Michigan under date of March 13, 1854, and the request of the Governor for patents based on said list of January 31, 1854; that thereby the title to the particular lands in controversy became complete and perfect, and was vested in the State of Michigan as of the 28th day of September, 1850; that the title, so made complete and perfect, did not depend upon the act of the Secretary of the Interior in identifying the lands in the manner above set forth, but was vested by and depended upon the Act of Congress itself, and hence that the want of a patent could not in any maner affect the right of the State of Michigan to the lands in controversy, and its title to it was complete and perfect without such patent; that the title, thus having passed to the State of Michigan, and being made perfect by the act of identification upon the part of the Secretary of the Interior in 1853, it was thereafter beyond the power of the Secretary of the Interior or the Land Department to recall that title or in any manner abridge it by recalling, modifying, revoking, or attempting to modify or revoke any of the instruments of identification which he had seen fit to transmit to the proper officers of the State of Michigan; that having passed beyond the power of the Secretary of the Interior in this behalf, it could only be recalled or canceled by a judicial action, prosecuted on behalf of the United States in a court of proper jurisdiction; that this not having been done in any manner in this case, so far as relates to the lands in controversy, the title was perfect in the State of Michigan, and has passed to the plaintiff. The Court of Appeals in its opinion (p. 339), "The reports of the Commissioner of the State Land Office showed it, and the Legislature of 1857 enacted a statute to forbid sales of lands before patents were received. That statutory provision has ever since been in force. Section 2 of Act 130 of the Laws of Michigan for 1883, upon which Sparrow obtained patents for the lands here claimed by the plaintiff seems to indicate that the lands appropriated by the State and authorized to be patented, were lands which were subject to sale, and as these were not, because no patent had been received for them, we have difficulty in finding the authority by which the patent issued to Sparrow. This is a question not submitted by counsel and therefore we do not pursue it."

The reason the question was not submitted by counsel was because the question had already been determined in favor of Mr. Sparrow by the Supreme Court of the State of Michigan.

State of Michigan vs. Sparrow, 89 Mich., 263. In this case the patents to Sparrow were attacked on several grounds,

and among others because "The lands had not been patented to the State, nor offered at public auction" under the act of 1857, cited above. The court then pointed out (p. 270) how the State had by acts of the Legislature in 1851, 1855, 1863, 1867, and 1885, granted and disposed of swamp lands for which no patent had been received, and finally disposes of the granting clause in the act under which the Sparrow patents were obtained on the authority of previous decisions of the court. The action of the State is dismissed and the patent to Sparrow sustained.

The title, being perfect in the State of Michigan, and having thus passed beyond the control of the Secretary of the Interior and the Land Department of the United States, this department was without any jurisdiction in the premises, and its attempt to convey the title to William A. Rust and to Addison P. Brewer, from whom defendants claim title in 1867 and 1870, was wholly without jurisdiction, and the paper title thus made is absolutely void and conveyed no title whatsoever as against the plaintiff, or the State of Michigan, through whom it claims the lands in controversy in this suit. Moreover, the title of the plaintiff being in the State of Michigan as of the 28th day of September, 1850, was the elder title, and as such must in this action of ejectment prevail.

We submit, therefore, that the direction of the verdict for the defendant by the district judge was, under the evidence, erroneous, and that the verdict should have been directed for the plaintiff, as it requested in its eleventh request to charge (Record, p. 288), and that the judgment of the Court of Appeals affirming the judgment of the Circuit Court should be reversed.

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APPENDIX NO. 1.

No. 187.

An act to provide for the sale and reclaiming of swamp lands granted to the State, and for the disposition of the proceeds:

Section 1. The people of the State of Michigan enact, That they adopt the notes of the surveys on file in the Surveyor-General's Office as the basis upon which they will receive the swamp lands granted to the State by an Act of Congress of September, 28, 1850.

SEC. 2. The minimum price of said lands shall be seventy-five cents per acre, and shall not be sold for less. All the moneys received from the sale of said lands shall be and remain a fund for the purpose of reclaiming said lands in conformity to the provisions of the grant.

SEC. 3. The Commissioner of the State Land Office shall have the control and supervision of said land, and of the sale thereof, and shall, as soon as the title vests in the State, cause the same to be sold at public auction at such times and in such quantities as he may think proper, and shall cause thirty days' notice of the time and place of the sale to be published in all the counties of the State in which there is a newspaper published. After the public sale under said notice the residue of said lands may be sold in the manner now provided by law for the sale of primary school lands, as near as may be, except as herein otherwise provided.

SEC. 4. On the sale of any of the said swamp lands, the Commissioner shall make out and deliver to the purchaser thereof a certificate containing a description of the same, the amount paid therefor, the date of sale, and the name of the purchaser, and setting forth that upon presentation thereof at the office of the Secretary of State, the purchaser shall be

entitled to a patent, to be executed by the Governor, for the lands therein described.

SEC. 5. All moneys accruing to said fund from the sale of the lands aforesaid shall be loaned to the State, and the interest arising from the same shall be paid by the State and become a part of the fund aforesaid.

SEC. 6. Said lands shall only be sold in the same legal subdivisions in which they shall be received by the State, nor shall any of said lands be subject to private entry until the same shall have been offered for sale at public auction, as herein above provided.

SEC. 7. The Commissioner of the Land Office is hereby authorized to procure all necessary books, maps or plats of such lands as may be required for the speedy and systematic transaction of the business of the office, and all proper charges for the same shall be paid out of the fund aforesaid.

SEC. 8. This act shall take effect immediately.

Approved June 28, 1851.

APPENDIX NO. 2.

No. 123.

An Act to provide for the selecting and locating the unselected deficiency existing in the quantity of lands due to the State of Michigan under the Act of Congress, approved May twentieth, eighteen hundred and twenty-six. and for any other land grant made by Act of Congress to this State.

SECTION I. The People of the State of Michigan enact. That the Commissioner of the State Land Office be and is bareby authorized and directed to cause lands sufficient to supply the existing deficiency in the quantity accruing to this

State by virtue of the Act of Congress approved May the twentieth, eighteen hundred and twenty-six, the ordinance of admission July twenty-fifth, eighteen hundred and thirty-six, and any other land grant since made to this State by Act of Congress, to be selected and located in parcels in conformity with the provisions of the several acts making the same.

SEC. 2. This act shall take immediate effect.

Approved March 11. 1861.

57). As ancient deeds after thirty years prove themselves, the law presuming that the attesting witnesses are dead, so here the lapse of far more than a generation creates like presumption that all competent witnesses are dead, especially with respect to land which in 1850 was in the wilderness. This aside, however, the position of plaintiff in error was and is that adjudication of this land as swamp by the Secretary of the Interior in 1853 dispensed with all tender of proof to establish de novo its swamp character.

VII.

The land here in controversy had been surveyed by the United States in 1839. The plat thereof and field-notes were of record and unchallenged, and by that survey the United States had sold a large acreage in the township prior to the swamp-land grant of 1850. Following that grant, and the election of the State to take by the field-notes of survey, the United States Surveyor-General, in execution of his instructions, found from the field-notes thereof that this land was returned as swamp and overflowed, and he accordingly embraced same in a list of such lands transmitted to the Land Department at Washington, March 31, 1852. (Rec. 24.) Thereupon this land, with others, was embraced within Ionia List No. 1, which was approved by the Secretary of the Interior to the State October 27, 1853 (Rec. 37-39), the approval of the Secretary on said date reading thus:

[&]quot;The lands embraced in the foregoing list are hereby "approved to the State of Michigan under the Act of "Congress app'd 28 September, 1850, subject to any valid "legal claim that may exist thereto."

January 13, 1854, certified copy of this approved list was transmitted to the Governor of Michigan (Rec. 36), and thereon, January 31, 1854 (Rec. 37), the Governor performed the duty imposed upon him under the grant by acknowledging the receipt of such approved list, and requesting the issuance of patent thereon. That request far patent has never been withdrawn, modified, or rescinded by the State.

The plat of the lands thus approved, which the granting Act required should accompany the "accurate list to be transmitted by the Secretary of the Interior to the Governor of the State," and which embraced the land in contest, was forwarded to the Governor from the Interior Department on March 13, 1854 (Rec. 26). The plat embracing this land appears in the record preceding page 47.

The Governor's request for patent covering this land has not been complied with, notwithstanding the positive direction therefor made by the granting act; and omission thereof gives rise to this case.

VIII.

Plaintiff in error, through its grantor Sparrow, has received patent from the State of Michigan for this land. (Rec. 53–55.)

IX.

Omission to thus patent the land to the State stands, as defendants in error claim, upon the premise that the original survey of the township made in 1839 was reported in 1849 as fraudulent, resulting in the resurvey thereof in 1856, and a new list of swamp land made therefrom and approved in 1866, which omitted the tracts here in controversy, but which defendant in error claims superseded

and annulled the former list transmitted and approved in 1852-'53 supra, and as a consequence therefrom destroys all title or claim of the State herein.

X.

Premising that, with respect to these tracts, there was never proven fraud or error in the original survey thereof, but judicial record establishing the contrary, it appears:

February 1, 1842, the Legislature of the State of Michigan, by joint resolution (Rec. 64), requested the United States to "cause the survey of certain townships " of land." This resolution named eighty-one described townships (which did not include the land here in controversy) which had either not been surveyed or so imperfeetly done as to render the survey valueless. This resolution caused Executive investigation, resulting in resurvey as found necessary, all of which work was done and fully completed before 1850, except three of such townships which were never resurveyed. This resolution covers the whole of the State's connection with the work of resurvey. Her action was pro bono publico, taken long prior to the swamp-land grant, and, therefore, has no effect thereupon. But upon this initiative public land surveyors were sent into the field and continued examination of alleged defective or fraudulent work until large sums were appropriated and expended for such resurveys throughout a large portion of Michigan. This was continued with resulting profit to deputy land surveyors until the work was summarily stopped by Commissioner Hendricks in 1857. (Rec. 253-259.)

XI.

The power of the Land Department to correct surveys is not here challenged, nor is the State or her grantees justly subject to the charge that it or they seek to assert a title to the land in controversy based upon a fraudulent and non-existing survey. Contra:

First. The original survey of 1839 continued to be recognized until 1858, and the lands in this township were sold and disposed of by the United States according to that survey for nearly twenty years. Manifestly, no resurveys could by alteration of lines or otherwise affect or destroy rights thus vested. The instructions for these resurveys carefully recognized this proposition (Rec. 74 75). If, therefore, the original survey was in fact made (which abundantly appears from this record) and the State not only elected to receive these lands thereunder, but same were in fact approved to her as swamp thereby, one of the fundamental grounds on which her title is here rested is that such designation and approval vested the title in the State hereto under the swamp grant, leaving the United States officials thereafter without power to ignore the vested right of the State or to change the description or character of the land here involved by any resurvey.

Second. The allegations of fraud and error with respect to these original surveys involved the running and location of the lines of survey and not the incidental description of the character of land which, under the surveying instructions, the deputies were required to report. In other words, the whole controversy with respect to these original and resurveys in Michigan has been primarily upon the alleged failure either to run such lines at all or the erroneous and defective running thereof. The character of the land as swamp or dry has not been the subject-matter of dispute. As the whole matter arose and was largely concluded prior to the swamp-land grant, the character of land in 1850 as designated by the original

survey was not a matter wherein the State or any other party could have been interested to induce fraudulent or false returns.

Third. Township 18 N., R. 3 W. (in which the land here in controversy lies), was surveyed by Deputy Henry Nicholson in 1839. The only charge of fraud or error against this survey appears in the report of Deputy-Surveyor Burt, who examined this township with many others in 1849, and who reports (Rec. 95) that the work therein was "bad throughout." Upon this report suit was brought in 1849 by the United States against Nicholson and his bondsmen in the United States Circuit Court for Michigan, to recover the liquidated damages named in the bond, and on the allegation that Nicholson had not performed his work. The substantial plea was performance, and upon trial resulted in verdict for the defendants. The record of this suit was offered in evidence here, ruled out by the trial court, and such ruling is assigned for error. (Rec. 260-264.) There was also offered in evidence and rejected the like record of a similar suit brought at the same time against Deputy Henry Brevoort, Jr., who had made survey in the same region, and on which like plea of performance with resulting verdict in favor of the defendant appears. (Rec. 264-270.)

Fourth. Comparison of the old and new surveys establishes complete and corresponding identification of these lands in controversy here by the lines and description of both the original and resurveys. It must be remembered that the original survey was made in 1839—the resurvey in 1856. During the intervening seventeen years the character of the land would necessarily undergo change. Forest fires would obliterate old survey corners, would destroy timber, and thereby drain by natural effect marsh woodland. Destruction of beaver dams would drain many

tracts flooded by the backing of the waters. The survey of 1839 had been made in the spring or wet season; the survey of 1856 was made in the fall or early winter or dry season. Yet the field-notes of the resurvey demonstrate that this land was, in fact, surveyed in 1839, precisely as the jury found in the action brought by the United States supra.

To illustrate:

The S.E. 1 of S.E. 1 Sec. 20 is one of the tracts here involved. The survey of the line between Sections 20 and 21 and 20 and 29 would determine the character of that The field-notes of the old survey (Rec. 43-44) disclose that in running the line north, between Sections 28 and 29, the surveyor left the section corner in a swamp which extends north on the line between Sections 20 and 21, and along the entire east side of this forty. The resurvey of this same line discloses two swamps on the same east line of this forty, and extending its whole length, the swamps being separated by a narrow ridge of a few feet in width. Manifestly, seventeen years naturally and easily accounted for this slight change. By the survey of 1839 this forty was certified to the State; by the resurvey it is held dry, although swamp land is reported by the resurvev on a large part of the southern line of the forty-thus, by the resurvey, enclosing it on two sides as swamp.

By the survey of 1839 the N.W. of S.W. Sec. 21 (in controversy here) is reported swamp, and the tract was so certified to the State in 1853. The character of this land is disclosed by the field-notes of the line between Sections 21 and 28 as wholly swamp (Rec. 40). The field-notes of resurvey (Rec. 160) show part only of this line as swamp, and again as intersected by a stream. That stream, in the spring of 1839, could easily have been in flood, and the survey then made truthfully report the land as swamp.

Again, the N.W. 4 of S.E. 4 Sec. 22 (in controversy here) was reported as swamp by the survey of 1839, and certified to the State as such in 1853.

By the resurvey of 1856, the S.W. ‡ of S.E. ‡ (the south adjoining forty) is reported as almost wholly covered by swamp, with a stream cutting its southwestern corner. Seventeen years before, this swamp could easily have existed on the N.W ‡ of S.E. ‡ (the forty here in suit), and forest fires and natural causes thereafter drained it.

The N.W. ‡ of N.W. ‡ Sec. 28 (in controversy here) was reported as swamp by the original survey, and certified to the State as such in 1853. The same amount of swamp land in this section is reported by the resurvey of 1856, showing that the swamp had changed its location—a natural result with lapse of years and often observable.

The N. ½ of N.E. ‡ Sec. 35 (in controversy here) was reported as swamp by the survey of 1839, and certified to the State thereunder in 1853. The resurvey shows a swamp extending directly across this eighty, and it is in fact swamp, but erroneously treated by the United States Land Department as dry. In short, the resurvey completely confirms the original survey as to the character of this land.

By the field-notes and plat of resurvey, the old section and quarter-section corners with respect to Sections 20, 21, 22, 28, and 35, wherein the lands here in suit fall, are found and reported as follows:

Section Corners :

Between Sections 22 and 27	Rec.	159
Corner of Sections 14, 15, 22, and 23.	66	161
Between Sections 21 and 22	66	169
Corner of Sections 21, 22, 27, and 28	46	165
Corner of Sections 26, 27, 34, and 35	66	167
Corner of Sections 25, 26, 35, and 36	66	168

Quarter-Section Corners:

Sections	22	and	27.													Rec.	159
66	22	and	23.				۰			۰		٠				44	161
66	15	and	22.								a		9			66	161
66	21	and	22.			٠				9						44	163
66	35	and	36.	۰				٠			٠					**	167
64	26	and	35.													"	168

More than three thousand acres was sold and conveyed in this township by the original survey. The plat thereof was on file from 1839 until 1858, when the plat of resurvey was filed. The two plats describe the same corners, and there is no change in the corners between the two surveys. The Register of the United States Land Office, who was called as a witness in this case, when asked (Rec. 52).—

"I will ask the witness if there is any difference in the "the two surveys," answered—

" No, there is not."

On the plat of the original survey, the entire acreage in the township is given as 23,162.14 acres, and on the plat of the resurvey as 23,340 acres. The difference is but 177.86 acres, or far less than 1 per cent. of the entire acreage involved. On the north and west sides of the township appear many irregular lots on both surveys, with fractional areas, yet the plat of resurvey brings the acreage at the even figure of 23,340 acres—an impossible result under such conditions; whereas the plat of original survey brings the fractional quantity of 23,162.14 acres, a result in entire harmony with the fractional areas involved, as shown by these forty-six fractional lots which fringe the north and west side of the township on the plats of both surveys.

It thus conclusively appears that this land was in fact surveyed in 1839 (1) by the field-notes and plat of resurvey, and (2) by the judgment rendered against the United States in the suit brought against the original surveyor and his bondsmen. The character of the land as swamp was truthfully reported by such original survey, for corresponding swamps are found by the resurvey somewhat diminished in size, during the intervening seventeen years, from natural causes and too plain to require extended recital.

Michigan having thus adopted the field-notes of the original survey of this township, and the existence of these surveys as a fact being thus demonstrated, it follows under all the decisions of this Court that the identification and certification of this land to the State as swamp vested the title thereto in her as of the date of the grant. That right was vested as fully as the right of any purchaser from the United States who bought during the existence and recognition of the original survey, to wit, between 1839 and 1858. Hence, both as matter of fact and matter of law, the right of the State to these tracts is as clear and absolute as if they had been purchased from the United States during that period for cash or otherwise taken by individuals under the general land laws. Payment of purchase price and resulting entry in the one instance could not vest the title more effectually than a direct grant by Congress followed by identification of this land as included thereby in precise accord with the granting act.

Hence we submit as fully applicable to this case the ruling of this Court in *Cragin* v. *Powell* (128 U. S. 691–699), wherein the Court, in speaking of the power of supervision and correction of the public land surveys, said:

[&]quot;It is conceded that this power of supervision and cor-"rection by the Commissioner of the General Land Office "is subject to necessary and decided limitations. Nor is "it denied that, when the Land Department has once

"made and approved a governmental survey of public "lands (the plats, maps, field-notes, and certificates all "having been filed in the proper office), and has sold or disposed of such lands, the courts have power to protect the private rights of a party who has purchased in good faith from the Government against the interferences or appropriations of corrective surveys made by that Department subsequently to such disposition or sale."

It should be well borne in mind that in making these resurveys the United States Land Department refrained from attempting to disturb the swamp-land title of the State where lists had been approved by the original survevs and patented to the State thereunder, and it is remarkable to note in this connection that these original surveys have thus stood as completely identifying the lands thus patented to the State, as well as also fully identifying all other tracts which had been sold or otherwise disposed of by the United States thereby long before these resurveys were made. Moreover, the Department at Washington was careful to distinguish between "incom-" plete" and "fraudulent" surveys in giving instructions for the resurveys. From this record as above recited it abundantly appears that the survey of the tracts here involved had in fact been made. The strongest presumption which can be indulged against us is that all the lines surrounding them had not been run, and this rests upon the evidence of a resurvey made seventeen years thereafter. Hence the strongest statement of the case against the State with respect to the matter of survey of these lands is that same fell within the class of "incomplete surveys." But the instructions of the Department here to the Surveyor-General, given on March 8, 1852 (Rec. 112-113), and long before the resurvey of the township here in question, were as follows:

"First-class—incomplete surveys. Where a portion only of the lines in a township is found to have been actually surveyed, and wherein some lines have been run and some corners established, which lines and corners can now be found, that portion of such original surveys which shall have been determined to be thus available by retracing the same is to remain undisturbed, and be respected, whether there have been sales made therein or not, and the residue of such township must be surveyed as if originally, but made to connect in all particulars with the former."

The resurvey of this township was not only made under these instructions, but in entire harmony therewith, because identity of corners between the original and resurvey is established by this record and shown above. The obvious intention of foregoing instructions was to leave undisturbed former lines and corners, and to treat them as effective from and under the original surveys.

XII.

Foregoing answers much that is found in opposing briefs, and leaves as pertinent for reply

ACTION OF THE UNITED STATES LAND DEPARTMENT ON RESURVEYS AND ALLEGED BINDING EFFECT THEREOF UPON THE STATE.

A.

It is strongly urged against us that the Department treated the resurveys as controlling in all cases where the lands had not been *patented* to the State under the original surveys and approved lists founded thereon; that in such cases new lists were made of the swamp lands shown thereby as to each unpatented township, which in effect

superseded the original approved lists, and that the State received and accepted patents on such new lists, whereby her right to any lands excluded therefrom, but which appeared as swamp on the original approved lists, became extinct. A large mass of correspondence, instructions to surveyors-general, etc., is submitted by defendant in error to establish these contentions.

We answer:

The assertion is incorrect both in fact and law. The legal effect of an approved list made up on the original survey, and the election of the State with respect to lands actually surveyed (as here) cannot be destroyed by such unilateral action of the United States Land Department. Title created by law of Congress and identified by the action of the special tribunal to whom the duty was thus assigned, could not be thus destroyed, nor did the Federal officials then in office undertake so to do.

Contra, December 22, 1858, Commissioner Hendricks wrote the Commissioner of the State land office (Rec. 31) a letter to which we call the Court's particular attention. It informed the State Land Commissioner that these resurveys required action on the part of the State "to en-" able us to adjust the business with proper regard to the "evidences in the case;" that selections had been reported by the surveyors-general on the original surveys, and had been approved by the Secretary of the Interior. and certified copies of the approved lists furnished the State. But, following such approval, the resurvey of many townships had been followed by new lists of selection. made up and transmitted by the United States Surveyor-General, which in matter of description of lands differed materially from the former approved lists; that patents for probably one-half of the townships in this condition, as thus originally selected and reported, were prepared and

transmitted prior to the Surveyor-General's transmission of these new lists in such resurveyed townships; that the balance of these original selections as thus approved had not been carried to patent, because, as the letter proceeded to ex parte rule, "the reports made after the re-" survey are the only proper evidences upon which our "action must be made in determining the grant;" that with respect to patents already issued the Department did not intend to make any alteration in the original approved lists. And transmitting a list of both the townships in which the lands had thus been patented, and those in which they had not, the letter states that such lists were forwarded "with the request that the proper " authorities of the State may elect to receive the grant " with reference to those townships in which the lands " have not been patented, as the selections are made upon "the evidences of the resurveys."

The State never made the election thus demanded, and, as will hereafter appear, repeatedly asked for the patenting of lands, approved under the original surveys, in such resurveyed townships which were not reported as swamp thereby.

But this letter adds the important and controlling statement that— $\,$

This was never done. From the beginning to the end of this record nothing appears to show that the United States Land Department ever formally undertook to revoke the approval of a single list in whole

[&]quot;It is our purpose to submit to the Secretary for a revo-"cation of approval so much of the lists of the several "land districts as embrace the tracts in the condition "specified, forwarding at the same time a list of the tracts "as subsequently reported for his approval."

OR IN PART WHICH HAD BEEN MADE UP UPON THE BASIS OF THE ORIGINAL SURVEYS AND APPROVED BY THE SECRETARY OF THE INTERIOR THEREUNDER.

This record is thus silent in this regard because the fact is that such formal revocation was never attempted. When new lists were made up from the resurveys they were certified by the Secretary of the Interior without recital or reference to the former approved lists in the same townships. For illustration: No list was made up upon the resurvey of 1856 of the lands in township 18 N., R. 3 W., (the township here in question) until in 1866. Full copy thereof appears in this record (pp. 178–180). It contains no reference to any former list nor suggestion of revocation, or attempted revocation, of the former approved list, certified in 1853, embracing the land in this township as then made up from the original survey.

Similar lists are found at Rec. pp. 184, 186, 198, 215 and 217, and contain no reference to former lists or attempted revocation thereof. Undoubtedly, as between the Land Department at Washington and the U. S. Surveyors-General, communications were sent declaring that lists based upon resurveys were transmitted and received as intended to supersede and abrogate the former lists based upon the original surveys in the same townships, but this unilateral action was taken by the United States on its own motion and in the exercise of a power which the State could not control. She could only receive patents for such lands as the Department was willing to issue, and was without remedy to force the Department to do other-Michigan had adopted the field-notes of survey; that election had been and is held conclusive upon her. The Federal Government, by its officers, insisted upon adopting the field-notes of subsequent surveys; ignoring the approved lists made up by the original surveys, which

remained unpatented, and, having done this arbitrarily, the State was without remedy to do otherwise than accept what she could obtain through the voluntary action of the Federal officials. All this is amplified in our original brief (pp. 144 et seq.), but on the facts as presented by this record, and the authorities cited in our brief, we submit, this erroneous view of the law thus indulged by the Federal officials could not defeat the lawful rights of the State. That the State again and again requested the issuance of patents upon the lands thus found in the original approved lists, but excluded in the subsequent lists made up upon the basis of resurveys, will appear by reference to pages 182–206 of the Record.

And, notwithstanding this ex parte action of the Department in thus arbitrarily attempting to hold the State bound by the field-notes of resurvey, this record discloses that lands were patented to the State on the basis of the original surveys and approved lists made up thereunder, long after the same townships had been resurveyed.

This appears from the Commissioner's letter of December 27, 1871, to the State Land Commissioner (Rec. 34), advising:

[&]quot;SIR: In reply to your letter of the 13th inst. in regard to the swamp lands in township 31 north, range 8 west, "Michigan, I have to say that it appears from our records that the lands selected as swamp in said township, according to the old survey, were approved by the Secretary of the Interior, Oct. 27, 1853, before the resurvey, and were, subsequently, on November 10, 1862, after the resurvey, patented to the State, according to the descriptions of the old survey.

[&]quot;This office has always regarded such approval and patenting final, especially when the description, according to the old plat, identifies the land with a reasonable approach to accuracy."

B.

It is further urged against us that the U. S. Land Department refused in all cases to recognize two lists of lands, one made up from the original survey and the other from the resurveys in any township.

In support of this contention reference is made to the action of the Commissioner on June 18, 1864 (Rec. 173–174), holding that supplemental list "D" which had been submitted from the resurveys in the Detroit District could not be patented, because the townships embraced therein had been covered by the approved lists and patenting thereof under the original surveys. This list "D" and this action thereon appears to have been again followed by the Commissioner in 1877 (Rec. 201) and in 1887 (Rec. 207).

This original action of June 18, 1864, with respect to list "D" does not appear to have been taken with notice to the State, nor are any reasons therein assigned for this arbitrary conclusion. But this same list "D" came before the Department on the appeal of the State from the Commissioner's rejection of its claim to certain lands therein, in the case of State of Michigan v. Powers' Heirs, 19 Land Decisions, p. 223, whereupon the Secretary of the Interior, October 9, 1894, decided that—

[&]quot;Admitting that selections from the township were "made and approved under the old surveys, such action on the part of the State did not debar it from making supplemental selections from that township, if the first selections did not embrace all the swamp lands which passed under the act.

[&]quot;Again, if the field-notes of the old or imperfect survey failed to disclose the real nature of the land, and the "more perfect resurvey, made after the passage of the swamp-land act and with reference thereto, shows the

" land to be in fact swamp, the State, relying on the Gov-

"ernment surveys, is entitled to file its supplemental list,

" with assurances of approval."

The fairness of this conclusion is too apparent to require comment. The principle there applied has equal application hereto, because, as shown above, the land involved in the case at bar was actually surveyed in 1839, and was found and reported to be swamp, and the resurvey thereof, made seventeen years later, and after the passage of the swamp-land grant, in returning the same as then dry should not preclude the State from receiving patent therefor upon the basis of the original survey. And in this connection we note the erroneous assumption of the opposing briefs, and indulged in the opinion of the Court below, that these resurveys absolutely superseded and abrogated the original survey. That is not true in fact nor in law. Both plats of survey have always been kept upon file, and necessarily the original survey could not thus be cancelled and held for naught, because the title to millions of acres of land sold by the United States to individuals and patented to the State under this and other grants rested thereon. The testimony of the Register of the land office in which the land here in suit lies (Rec. 49) shows that both plats are kept extant in his office, the original plat of survey being marked only with the word "Resurvey," and (Rec. 53) that the plat of resurvey shows disposal thereon made only from the date of its receipt in the local office-June 3, 1858. Prior to that time land in many sections had been disposed of by the old survey.

€.

Stress is laid upon the fact that, in reporting the original list of swamp lands in this township in 1852, the surveyor

noted the letter "F" on this township, and explained the same in his certificate thereto (Rec. 153) by inserting that "the tracts reported by Judge Burt and Hiram Burnham " to be fraudulent are embraced in the list and marked "F." But it must be borne in mind that, with this list and this certificate before him, the Secretary of the Interior, on October 27, 1853, embraced this land in his approved list certified to the State, made up from this list of selections thus reported eighteen months preceding from the Surveyor-General. Why was this done? The Secretary had before him the report of Deputy-Surveyor Burt, alleging the survey of this township, with others, to be "bad throughout," for same was transmitted by the Surveyor-General in his annual report for 1849 (Rec. 89-96). But as early as 1850 (and as shown supra) the United States had brought suit against the deputy who made the original survey of this township and his bondsmen upon the distinct allegation that he had failed to make the survey, and had gone to trial upon the distinct plea and issue of performance, with resulting judgment in favor of the defendant. This constitutes the entire record. both pro and con, relating to the defective survey of this township. It must be assumed that upon this record the Secretary of the Interior exercised his judgment and determined that the State was entitled to receive the grant of swamp lands in this township by the return and fieldnotes of such original survey. No other conclusion can be indulged, because it is idle to assume that the United States Land Department was proceeding with eyes wide open to certify lands to the State under a survey alleged by its own records to be defective or fraudulent, and in the anticipation that it would thereafter be called upon to revise and change all of its work. In our original brief, at page 92 et seq., we have fully discussed the facts and

submitted authorities to establish the finality of this action of the Secretary on this question of survey as involved in his then certification of this land to the State as swamp. The correctness of the Secretary's conclusion is made manifest by the resurvey, which disclosed the actual existence of the section lines and the swampy character of the land involved in pending suit.

1).

Attention is called to the fact that on the original certified list of 1853 appear erasures and notes showing that same has been superseded by a supplemental list made in 1866. How this mutilation of the record can affect the title of the State is not explained, but it must be borne in mind that none of these erasures and notes could have been made until after the resurvey of this township in 1856, for the facts on which it was attempted had no existence prior to such resurvey, nor could such mutilation at any time, or however done, destroy the rights of the State nor defeat the full legal effect of the act of the Secretary of the Interior in thus identifying this land in such approved list as part of the swamp grant to the That these marks were not intended to have any legal effect appears by the fact that the approved list made up in 1866 from the resurvey of this township (Rec. 175-178) contained like erasures. Similar erasures were also found in approved lists based upon resurveys at page 217 of this Record. And in respect to the Surveyor-General's lists submitted in 1852, of which copy appears in this Record (pp. 149, 153), it should be noted that such copy comes from the State land office where all the original records of the United States Surveyor-General's office were long since lodged, and it is more than probable

that such list was the original from which the list transmitted to the Department by the Surveyor-General in 1852 was made. The waving lines drawn through the township and range on all of these lists are made in pencil, and as it is found both on lists certified under the original surveys and under the resurveys it simply indicates that it has been done by some clerk in checking the tracts described thereon. It goes without saying that such mutilations of records cannot destroy or mutilate titles.

Polk's Lessee v. Wendell, 9 Cranch, 87, 97. Bicknell v. Comstock, 113 U. S. 149, 156.

E.

Again, it is urged that the field-notes of survey gave no true index to the character of the country. Copious quotations are made from the reports of the United States Surveyors-General to sustain that conclusion. But it must be again remembered that these alleged fraudulent and defective surveys had been under examination and correction for eight years preceding the swamp-land grant. With full knowledge thereof the Secretary of the Interior offered to the State the option to take by the field-notes of these surveys or by new and independent proof. The State has been held bound by its selection to so take by the field-notes of survey. The only difficulty is that the United States has ex parte insisted upon the right to change defective surveys by new surveys and to compel the State to take the grant by such new surveys, thus attempting to ignore all prior surveys and identification of swamp lands thereunder, to the manifest detriment of the State, and without power on her part to resist. The consistent holding of the Department that the State was thus

bound by her original election is set forth at length in our original brief (p. 62 et seq.), and because the State is willing to stand by that election and asked to have the swamp grant patented to her by the field-notes of actual survey as then existing gave no warrant in law or morals for the subsequent attempt to force upon her new surveys, made years after the grant, and, in short, to wholly change the record on which her election was predicated. State in this regard and by this election stands in harmony with the original theory on which the legislation for this swamp-land grant was initiated. For, as set forth at page 59 of our original brief, and as well-understood public history, the bill, as passed by the Senate, granted only such lands as were designated as swamp on the plats of survey. Under the advice of the United States Land Department, the provision was enlarged to admit evidence aliunde, and became in that form a law. But the whole tenor of the grant with respect to identification proceeds upon a theory harmonizing well with the original provision of the bill restricting same to the lands thus reported swamp by the official notes of survey. The State, having accepted such field-notes of survey as the basis for adjustment of the grant to her, cannot now be charged, nearly fifty years later, with bad faith in simply asking that lands actually surveyed and returned as swamp should be recognized as part of the grant.

F.

Stress is laid upon the letter of the State Land Commissioner (Rec. 189) of April 30, 1874, transmitting to the Commissioner of the General Land Office a supplemental list of lands in the Grand River District, in townships resurveyed, as intended to supersede prior lists in the same

townships, and the argument is drawn therefrom that this was a recognition by the State Land Commissioner of the fact that such new lists based upon resurvey superseded the old. But it will be found that the State Land Commissioner was merely reciting in his letter the same descriptive heading given to this supplemental list as made up by the United States Surveyor-General, and which appears at page 175 of the Record. And in this connection it is important to note that in July, 1881, the Governor of the State requested patent on tracts included in the township here involved, based upon the original approval in 1853, thus demonstrating that the State officers did not so interpret the effect of the new lists as defeating the claim of the State under the old. (Rec. 203–204.)

These repeated refusals of the Department, shown supra, to patent to the State lands certified to the State as swamp by the original surveys left the State without remedy by any suit it could bring against the United States. At the inception of the grant her legislature had provided that no patent could issue from the State until the land had been patented to her by the United States, and the Court of Appeals in this case (Rec. 339) assumes that prohibition as still in force. But this is error, for in State of Michigan v. Sparrow, 89 Michigan, 263, the Supreme Court of the State expressly finds full authority in the State law to issue patents to swamp lands which have not been patented by the United States to the State. This construction of the State statute is controlling here. Thereunder the State, by her grantee, can thus obtain standing in court to assert her title.

G.

Opposing counsel quotes the letter from United States Surveyor-General Noble to the Governor of Michigan of

January 3, 1851 (Rec. 20), as authority for the contention that the Surveyor-General then notified the State that there was no authority "for designating a portion of the "swamp lands from the notes of the surveyor returned to "this office, and a portion by a resurvey." The manner in which this quotation is thus used is misleading. erence to the latter will show that the United States Surveyor-General informed the Governor as to the manner in which the State could make her original selectioni. e., either to take wholly by the field-notes of the public land survey or wholly by new and independent proof to be submitted by the State. The latter has no relation whatever to the question of the resurveys then in progress correcting former surveys, and its whole tenor repudiates the possibility of such a matter being in the mind of the writer.

11.

It is urged that the State failed to protest against the reoffering of this land by the United States at the public sale in 1869, following which the defendant in error and his grantors purchased from the Government. It is only necessary to reply that the claim and title of the State was matter of public record, of which such purchasers were bound to take notice. Such protest was not necessary to protect that right, nor does its absence cast the legal title upon the Government's grantee. The case in this regard is within the rule well illustrated by the decision in Goundie v. Northampton Water Co., 7 Barr, 233, which holds that after registry of a deed the owner need not give notice of his title at sheriff's sale of another title. And in Rice v. Dewey, 54 Barb. 455, 470, which declares that—

"No case can be found holding that a mortgagee, whose mortgage was duly recorded, lost any right by neglecting to give personal notice of his mortgage to a purchaser from the mortgagor."

1.

At pp. 54, 55, counsel quote from letter of the State Land Commissioner to the Governor, dated April 5, 1859 (R. 221), and the annual report of such Commissioner for 1860 (R. 226–228), to show apparent acquiescence on his part in the plan of adjustment of the grant by the resurveys, and ignoring the certifications and approvals made to the State by the original surveys. But counsel fail to quote the following pertinent observation in such letter, viz:

"And, under all the circumstances in the case, I don't know why they cannot give us the patents under the old "lists, as approved, with the same propriety that they have the others.

"The erroneous surveys were known to the Department before these patents were made, and must have come to "the knowledge of the Department about the time Con-"gress made the law granting the swamp lands to the "State."

And the equally pertinent conclusion of the State Land Commissioner's report for 1860, *supra*, where, in speaking on the same subject, he concludes thus:

"No patents have been received since January, 1859, and "I think, therefore, we have reason to fear that the De"partment at Washington is withholding those about which
"there is no conflict, as a lever with which to compet the
"adjustment of the remainder in accordance with their
"proposition."

Does this argue acquiescence as claimed by counsel?

./.

At pp. 56-61 counsel quote from annual reports of the State Land Commissioner to show that the swamp grant, as then claimed by him, had been practically all conveyed to the State, except some 35,000 acres in Cheboygan County. This matter is fully discussed and its error exposed in our original brief, pp. 137 et seq. And the conclusion of counsel (61) that the State had assented to an adjustment of the grant upon the basis of the resurveys is fully answered in our original brief (pp. 125-141).

K.

At pp. 61-62 counsel refer to certain exhibits, being letters from the General Land Office to the State officers advising of certain corrections in approved swamp lists, deducing therefrom the conclusion that such corrections were matters of common practice. But examination of these exhibits will show that tracts so expunged were lands either disposed of by the United States prior to the swamp grant, or otherwise than reserved, or mere clerical corrections in descriptions of tracts by substituting correct for erroneous or non-existing descriptions. All of this does not prove that by such process of erasure merely the State's right could be thus destroyed with respect to land not disposed of prior to the swamp grant, nor reserved therefrom or where no clerical error of description is found. Lists of lands previously sold or reserved would convey no title to the State, because the grant did not embrace them, and their erasure could not affect the State's title any more than their original and erroneous inclusion in the approved lists; and correction of clerical errors of description is manifestly not authority against us here

XIII.

Much argument is indulged to show that the Secretary of the Interior has and exercises the power to revoke approval of swamp-land lists upon proven fraud thereon or in the evidence on which they are based. But we have shown supra that the original survey of 1839 in respect to this land was not fraudulent; that the lines were in fact run and the character of the land truthfully returned thereby; that the United States was defeated on trial of the issue of fact on this question in the suit brought against the original surveyor; that the resurvey of 1856 reports swamps on the lines affecting these lands where swamp land was reported by the original survey and that many of the original section and quarter-section corner posts in and around the sections embracing the lands in suit were found correctly located by the resurvey. Hence the power of revocation assumed to exist against proven fraud cannot here be called into exercise, because there was no fraud in the original survey embracing this land. Surely the mere ipse dixit of the Department assuming fraud cannot defeat the title of the State against all the evidences furnished by this record establishing the contrary with respect to the tracts here in controversy.

Furthermore, the Oregon cases decided in recent years by the Secretary of the Interior and cited with chief reliance against us are not applicable, (1) because active participation of the State's agent in the identification of the swamp lands appears, and as Oregon did not take the grant by the field-notes of survey such connection of the State agent therewith presents a case far different from the one at bar. In these and all the Executive decisions thus cited (pp. 76–82) it affirmatively appears that fraud in the return of the survey was established under oath or

manifest mistake appeared, as in certifying land otherwise disposed of or non-existing. But in all the cases thus cited formal revocation of the approved list was made, which was never done in respect to the 1853 approved list which embraced the lands here in suit. Nor has the State of Michigan ever been formally notified that the original approved list of 1853 has been rejected or the approval thereof revoked. That list is of record in the United States Land Department to-day uncancelled.

XIV.

THE CONFIRMATORY ACT OF MARCH 3, 1857.

The application of the Act of 1857 to the lands here involved is demonstrated both on reason and authority by our original brief (pp. 105–113). It remains only necessary to correct the misapprehensions indulged by opposing counsel.

1. It is assumed (pp. 94–96) that certain cited decisions of the Department (State of Arkansas, 8 Land Decisions 387, and State of Michigan, 7 ib. 514), hold the Act of 1857 inoperative in cases similar to the one at bar. This is plain error. Those cases hold that where, before the Act of 1857, the selection had been rejected, the Act did not apply. But in present case the selections had not been so rejected. It was not until in 1858 that the United States Surveyor-General forwarded his list of selections based upon the resurvey of this township. Prior to that time the approved list of 1853 stood unimpeached and without any adverse action. The Secretary of the Interior did not act upon the supplemental list thus forwarded in 1858, until in 1866, when he approved a new list, made up therefrom, excluding the tracts here in suit. This is the only action

wherefrom rejection of the 1853 approved selections can be even inferred. No revocation of the original list of 1853, which includes these lands, was then or since attempted. Commissioner Hendricks had in 1858 (supra, Rec. 31) disdinctly advised the State that formal revocation of the original approved lists would be made as and when new lists were made up based upon the resurveys with respect to tracts so originally approved but not returned as swamp by such resurveys. If this had been attempted, the State's affirmative action and protest could have been expected. Until this was done she was not required to act, for, until such annulment of her title was thus formally attempted, she was not required to speak.

2. The construction given the Act of 1857 by Secretary Thompson in 1858 (1 Lester, 563), cited and relied upon against us, is in harmony with the rulings of the Department in the Arkansas and Michigan cases supra, and the facts of present record disclose a case clearly confirmed by the Act of 1857 under the decision of Secretary Thompson, i. e., a list of approved selections not rejected nor in any manner disturbed at time of the passage of the

confirmatory act.

3. In State of Michigan v. Powers' Heirs (19 Land Decisions, 223–225), Mr. Secretary Smith, on October 9, 1894, gave like broad interpretation to the Act of 1857. In that case it appeared that the original list had been approved and patented, but in February, 1857, a new or supplemental list was transmitted by the U. S. Surveyor-General of additional lands shown by the resurvey to be swamp. This latter list was rejected by the General Land Office on June 18, 1864. On these facts the Secretary held:

[&]quot;If the State's selection was made prior to March 3, "1857, and if at that time the land was vacant and unap-

" propriated, and not interfered with by an actual settlement under existing law, the selection is confirmed."

The Act of March 3, 1857, is purely remedial; hence its operation is co-extensive with the mischief. No limitations or exceptions can be made thereto save such as are expressly named in the act (1) that the lands are vacant, and (2) not claimed by actual settlers under any existing law. The proof herein shows that these statutory exceptions did not exist with respect to these lands (Rec. 48), and hence they necessarily fell within the confirmation made thereby.

XV.

THE CLAIM OF ESTOPPEL AGAINST THE STATE.

It is alleged that the State is estopped by its "conduct," but upon the facts in this record it is clear that the action of the State has been wholly negative. She has simply kept silent. With her title of record and notice thereof thus open to all the world, it cannot be affirmed that the mere silence of the State creates an estoppel against her here. This point is fully discussed in our original brief (pages 143–161), and the controlling decisions of this Court are herein cited at length which demonstrate that the State's silence will not create an estoppel. The doctrine is also well supported by the following cases:

Sulphine v. Dunbar, 55 Miss. 255, wherein the syllabus (fully supported by the text), concisely states the point decided thus:

[&]quot;Where a tract of land is sold under a deed of trust cov-"ering the whole, but given by a part owner, the owner of "another interest in the same, residing upon the place and "making no objection to the sale and no claim to the land at

- "the time of the sale, is not by such conduct estopped from afterwards asserting his title against the purchaser, if, at the time of the sale, his title is a matter of record, and he does nothing to mislead the purchaser into buying the land, although remaining silent as to his title."
 - In Neal v. Gregory et al., 19 Florida, 356-371, it is held:

"It is also true that when the actual state of the title can be readily ascertained by reference to the record, and the purchaser neglects to avail himself of the information which a simple examination of the record affords, silence unaccompanied by fraud will not operate as a peremptory estoppel. Bigelow v. Topliff, 25 Vermont, 253; Carter v. Champion, 8 Conn. 554; Gray v. Bartlett, 20 Pick. 183."

And to the same effect are— Kingman v. Graham, 51 Wis. 232. Knouff v. Thompson, 16 Pa. St. 357.

Rice v. Dewey, 54 Barb. 455.

May v. Cartwright, 20 Ark. 407.

The case of State of Michigan v. Jackson, Lansing and Saginaw Railroad Company (16 C. C. A. 345, 69 Fed. Rep. 116), cited at length against us, was decided by the same Court whose decision in pending case is here under review. And the conclusion therein that the State is estopped is sought to be supported by the citation of like decision in State of Michigan v. R.R. Co., 89 Michigan, 481. In both of these cases, however, the relevant and controlling fact appears (wholly differing therein from the case at bar) that the land had been certified to the State for railroad purposes; such certification had been accepted by the State; the State had taxed the lands in the hands of the railroad company and its grantees, and thus by matter of record had fairly become estopped from asserting any adversary title under the prior swamp-land grant.

In an elaborate foot-note to the case reported in 16 C.C. A., supra, the authorities upon the question of estoppel against the United States and the States are fully reviewed. Whilst by no means in harmony, we believe the weight of authority will be found against the doctrine asserted by the Circuit Court of Appeals. In the light of these anthorities and upon original reasoning, we submit, the true line of demarkation is that the State may be estopped by affirmative Acts of her Legislature, or of her officers acting within the scope of their power. But that mere neglect or silence on the part of the State or her officers caunot, upon the ground of laches or conduct, create an affirmative right by way of estoppel against the State. It is manifest here that the State Land Commissioner could not bind the State by acceptance of the ex parte ruling of the U.S. Land Department holding that the swamp grant must be adjusted in whole or in part upon the basis of the resurveys; nor, we submit, is there any evidence in this record from which it can be fairly inferred that such officer undertook to exercise any such excessive and non-existing power. No statute of limitation can run against the sovereign, except by its express consent. No laches can be imputed to the Government. United States v. Dalles Military Road Company, 140 U.S., pp. 599-632. and cases cited therein.

This sound doctrine, so essential to the welfare of the State, has, we submit, complete application here. All the evidence in the case demonstrates that this land was originally rightfully approved to the State as swamp. Her selection thereof stands confirmed under the Act of March 3, 1857, supra, and the subsequent mistaken action of a Federal official in ignoring her title, as thus made and confirmed, and in issuing the patents relied upon by the defendant in error, cannot be upheld against the title of the State upon the ground that such conduct, which the

State could not control, lays foundation for any just claim of estoppel against the State by her silence, when her right and title was thus made of public record and the confirmatory Act of March 3, 1857, stood upon the statute book as a *law* whereby all men were bound.

Nor are counsel's assertions correct which ascribe to the State active consent and acquiescence in the adoption of new and substitute lists prepared upon the basis of the resurveys. None of the proof offered and set forth at length in the opposing briefs sustains such conclusion of fact. Contra, the Governor was in 1855 simply asked to suspend sales of land certified to the State as swamp pending adjustment of the differences caused by the resurveys (Rec. 171). This was followed by Commissioner Hendrick's letter in 1858 (Rec. 31), requesting the State's election to receive the grant in townships where the lands certified had not been patented "upon the evidences of "the resurveys." The State did not reply. The State Land Commissioner in some of his annual reports did note the fact that the U.S. Land Department proposed to adjust the grant on the basis of the resurveys, but nowhere in the record does it appear that the Legislature or even the Governor took affirmative action upon any such basis or committed the State by any attempted consent thereto. If estoppel can be maintained against the State on this record, it cannot be predicated on affirmative acts by the Legislature or any officer of the State having authority to bind her in so grave a matter.

Respectfully submitted.

A. T. BRITTON, FRANK E. ROBSON, A. B. BROWNE,

Attys. for Plaintiff in Error.

J. W. CHAMPLIN.

of Counsel.



SUPREME COURT

UNITED STATES

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No. 335.

MICHIGAN LAND AND LUMBER COMPANY, LINERS

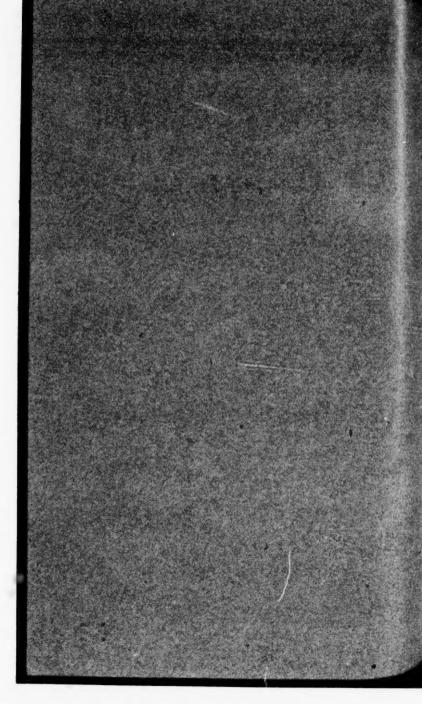
Plaintiff in Error,

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CHARLES A. RUST, Surveyor,
Defendent in Error.

BRIEF IN BEHALF OF DEFENDANT IN ERROR.

BENTON HANCHETT,
Attorney for Delendant in Error,



SUPREME COURT

OF THE

UNITED STATES.

MICHIGAN LAND AND LUMBER COMPANY, Limited,

Plaintiff in Error.

VS.

CHARLES A. RUST, Survivor,

Defendant in Error.

No. 331.

BRIEF IN BEHALF OF DEFENDANT IN ERROR.

Recovery by ejectment is sought in this suit of the undivided one-half of the following described lands, situated in township eighteen (18) north, range three (3) west, in the State of Michigan, viz:

The southeast quarter of the southeast quarter of section twenty (20), the northwest quarter of the southwest quarter of section twenty-one (21), the northwest quarter of the southeast quarter of section twenty-two (22), the northwest quarter of section twenty-eight (28), and the northeast quarter of section thirty-five (35).

As to the other lands described in the declaration, the plaintiff discontinued the suit on the trial, and claimed to recover for only an undivided half of the lands above described.

Record pp. 15 and 40.

The claim of the plaintiff is that the land inured to the State of Michigan under the swamp land grant of September 28th, 1850, entitled "An Act to enable the State of Arkansas and other states to reclaim the swamp lands within their limits."

9 U. S. Statutes at Large, page 519.

The statute provides as follows:

- "Sec. I. That, to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands made unfit thereby for cultivation, which shall remain unsold at the passage of this act, shall be and the same are hereby granted to said state."
- "Sec. 2. That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make an accurate list and plats of the lands described as aforesaid, and transmit the same to the Governor of the State of Arkansas, and at the request of said Governor, cause a patent to be issued to the state therefor; and on that patent the fee simple to said lands shall vest in said State of Arkansas, subject to the disposal of the Legislature thereof. *Provided, however*, that the proceeds of said lands, whether from sale, or by direct appropriation in kind, shall be applied exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid."
- "Sec. 3. That in making out a list and plats of the lands aforesaid all legal subdivisions, the greater part of which is 'wet and unfit for cultivation,' shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom."

"Sec. 4. That the provisions of this act be extended to and their benefits be conferred upon each of the other states of the Union in which such swamp and overflowed lands, known as designated as aforesaid, may be situated."

In order to execute the provisions of this act and designate the lands, which, by the terms of the act, pass to the state, the Commissioner of the General Land Office sent to the Surveyor-General instructions for making out lists of the lands, of date November 21st, 1850, which is Exhibit 3 A, p. 17, and sent a copy of the instructions to the Governor of the state by Exhibit 3, p. 16.

These instructions say, page 18, "The only reliable data in your possession from which these lists can be made out are the field notes of the surveys on file in your office, and if the authorities of the state are willing to adopt these as a basis of those lists, you will so regard them. If not, and these authorities furnish you satisfactory evidence that any lands are of the character embraced by the grant, you will so report them. The following general principles will govern you in making up those lists, to-wit:

Where the field notes are the basis and the intersections of the lines of swamp or overflow with those of the public surveys alone are given, those intersections may be connected by straight lines, and all legal subdivisions, the greater part of which are shown by these lines to be within the swamp or overflow, will be certified to the state: the balance will remain the property of the government. * * And in every case, under each rule or principle herein prescribed, forty-acre lots or quarter-quarter section will be regarded as the legal subdivisions contemplated by law."

The instructions further directed that the Surveyor-General make out lists of these lands as early as practicable according to a form furnished, one copy of which he was to

transmit to the land officers and another copy to the Commissioner of the General Land Office. The lands selected should be reserved from sale, and after those selections are approved by the Secretary of the Interior, the register should enter all the lands so selected in his tract books as "granted to the state by Act 28th September, 1850, being swamp or overflowed lands," and on the plats enter on each tract "State Act 28th September, 1850." Copies of the approved lists to be sent to the register for this purpose.

The State of Michigan, by Act No. 187 of the Laws of 1851, page 322, "adopt the notes of the surveys on file in the Surveyor-General's office as the basis upon which they will receive the swamp lands granted to the state by an act of Congress, September 28th, 1850."

The process of designation of the lands adopted was as follows: The Surveyor-General, from the field notes of the survevs on file in his office, made a plat of the lands, and where swamps were shown by these minutes to intersect section lines on more than one side of the section, lines were drawn from each exterior intersection of the swamp at the section lines across the section to the intersection of the swamp lines upon the other side of the section, and all the territory between these lines so drawn was treated as swamp. Each forty acres intersected by these lines was treated as swamp where it appeared that the greater part of the forty came within the lines. Lists were made of the lands found in this manner to be swamp, and copies thereof were sent by the Surveyor-General to the register of the United States Land Office of the district in which the lands lay, for him to designate which of the lands in the list had been sold by the United States prior to the date of the grant.

These lists, with the annotations of the land officers, were then transmitted to the office of the Commissioner of the General Land Office, to be there compared with the tract books in that office, and clear lists made out of the lands falling to the state under the law, in that office.

See Exhibit 9, pp. 22 and 23, and Exhibit 12, p. 25.

When the list had been perfected in the office of the Commissioner of the General Land Office, it was presented to the Secretary of the Interior for approval. Upon approval by him, a copy of the list, so approved, was transmitted to the Governor of the State, and upon request of the Governor patents were issued to the State for the lands contained in the list. A copy of the same approved list was also sent to the register of the land office in the district in which the lands were situated.

See Exhibit 23, pp. 31 and 32.

In this manner the *original list* sent by the Surveyor-General to the Commissioner of the General Land Office remained in that office. The *original of the list approved by the Secretary of the Interior* also remained in that office. The Surveyor-General retained a copy of the list made out by him in his own office.

The records and files of the Surveyor-General's office, upon the business of that office being closed, were transmitted for safe keeping to the office of the Commissioner of the State Land Office at Lansing, Michigan, on May 15th, 1858, and February 6th, 1860. It was in this manner that the files from the Surveyor-General's office came to be found in the office of the Land Commissioner at Lansing, Michigan.

Record page 27.

The lands in this township, eighteen (18) north, range three (3) west, as appears by the field notes put in evidence by the plaintiff, were surveyed prior to March 13th 1839.

See Exhibit 30, pp. 40 to 47, at p. 47.

In 1842 attention was called to the fact that frauds had been committed in the original surveys on many of the lands in the State of Michigan, and proceedings were taken, on the application of the State of Michigan, by the United States to ascertain the extent of these frauds, and to resurvey the lands where the original surveys were found to be defective. The work of resurveying began before the passage of the swamp land grant of September 28th, 1850, and was carried on from year to year down to 1857.

When the reports of these surveys were made to the office of the Surveyor-General, lists of lands coming within the swamp land grant were made from the resurveys instead of from the minutes of the original surveys.

It was decided by the United States authorities that the reports made after the resurveys were the only proper evidence upon which their action must be based in determining the grant.

It was also decided that where lists had been made and approved, based upon the original surveys, and patents had been issued for lands contained in such approved lists, no changes would be made in such townships on account of the resurveys, but in all other cases the resurveys were to govern, and in cases where lists had been made up and had been approved, but the lands had not been patented, such lists should be corrected by the resurveys and the patents issued upon lists made up and approved from such resurveys.

See Exhibit 23, p. 31, plaintiff's evidence, being the letter

from the General Land Commissioner, Thos. A. Hendricks, to S. B. Treadwell, Commissioner of the State Land Office, of date Dec. 22, 1858.

Accompanying this letter of Commissioner Hendricks was a list showing the townships in which the tracts, as reported to the Commissioner of the General Land Office, from the evidences of the original surveys, had been approved and patented (page 33.)

Also a list of the townships in which the tracts as reported to the Commissioner of the General Land Office, from the evidences of the original surveys, had been approved but not patented (p. 33 and 34.) In this list said township 18 north, range 3 west, appears as one of the townships in which there had been an approved list, but where no patent had been issued. In such cases the declaration of Commissioner Hendricks (page 32) is as follows:

"Since such approvals were made and certified, the surveyors general, upon the evidences of the resurvey of many townships, have forwarded lists to supersede and abrogate the reports made in townships described therein.

¹⁴ These subsequent selections differ materially from the former ones.

"The patents for probably one-half of the townships in this condition as originally selected and reported, were prepared and transmitted prior to the receipt of the subsequent reports based upon the evidences of the resurveys.

"The balance of the selections originally made, and which are superseded by reports under resurveys, have been approved and certified, but are not carried into patent, nor can they be as thus approved, for the reason that the reports made after the resurveys are the only proper evidence upon which our action must be made in determining the grant."

See also Exhibit 24, page 34, which is a letter from the Commissioner of the General Land Office to the Commissioner of the State Land Office, dated December 27th, 1871, and Exhibit 25, page 34 and 35, which is a letter from the Commissioner of the General Land Office to the Register and Receiver at Detroit, dated September 6th, 1877.

The plaintiff bases the right to recover upon the following evidences:

First. Exhibit 15, (p. 26) a letter from the Commissioner of the General Land Office, John Wilson, to the Governor of Michigan, dated January 13th, 1854, saying that he transmits "a certified copy of list No. 1, of swamp and overflowed lands, selected as inuring to the state, in the district of lands subject to sale at Ionia, taken from the original on file in this office, which on the 27th day of October, 1853, was approved by the Secretary of the Interior."

Second. Certain schedules and receipts (p. 27) showing that the field notes, maps, etc., appertaining to the surveys of the United States in the Surveyor-General's office, were transmitted to the State Land Office of Michigan.

Third. A certified copy from the General Land Office of the Surveyor-General's list No. 1, of Grand River Land District, dated March 29th, 1852, which is Exhibit 26, page 36. The entire of the lands in the Exhibit are not printed. Only the lands in the township in question, viz: 18 north, range 3 west, are printed.

These two facts will be noted in regard to this Exhibit:

to the Exhibit, that "the districts reported by Judge Burt and Hiram Burnham to be fraudulent, are embraced in this list and marked 'F'." The mark "F" is at the head of the list of lands of the town in question. (Page 36.)

2d. On the right hand margin of the list is the following note: "Note—This selection in town 18 appear to be super-seded by the supplemental list No. 3."

Fourth. Exhibit 27, page 37, which is approved list No.1, of the Ionia Land District, which was approved October 27, 1853. (p. 39) and the list referred to in said Exhibit 24. (p. 34.) This is a certified copy from the General Land Office of the original approved list on file in that office.

These points are to be observed in relation to this Exhibit, viz: In printing the Exhibit, only the township in question

is included, the other townships being omitted.

Fifth. Exhibit 30, page 40 to 47, being the field notes of the original survey of town eighteen (18) north, range three (3) west,

Sixth. A plat of the survey of township eighteen (18) north, range three (3) west, from the records of the State Land Office. Exhibit 31, p. 47.

Seventh. A map of the Ionia Land District. Exhibit 32, p. 47.

Eighth. The testimony of Oscar Palmer, Register of the United States Land Office at Grayling, Michigan, (p. 48)

who produced the tract book in use in that office, embracing town eighteen (18) north, range three (3) west, and being inquired of in relation to the southeast quarter of the southeast quarter of section 20, the northwest quarter of the southwest quarter of section 21, the northwest quarter of the southeast quarter of section 22, the north half of the northeast quarter of section 35 (p. 48), he says (p. 48):

"It appears that the descriptions read have been at some time selected as swamp lands and cancelled, selected under List No. 1, and there appears to be a red mark through it."

He further says (p. 48): "The plat book is another record from my office. It shows the original and resurvey, the original plats being cancelled."

On p. 49, he says in relation to this township, "The indication that there has been a resurvey, is that on the original plat, written across the face is the word 'resurveyed,' and followed by the resurveyed plat."

Referring to his tract book, and speaking of the southeast quarter of the southeast quarter of section 20, he says what appears on that tract book in reference to that description is "the first entry includes the entire south half of the southeast quarter of the section, 80 acres swamp land under act of the 28th of September, 1850, approved. See List No. 1.

Q. What condition is that in?

That is cancelled by a red line drawn through the entire entry," (P. 50).

He further says (p. 50, 51) that the further entries upon his tract book show that the southeast quarter of the southeast quarter of section 20 was purchased by William A. Rust at \$362.00, November 12th, 1869, patented to William A. Rust, May 10th, 1870.

The northwest quarter of the southwest quarter of section 21 was purchased by William A. Rust at \$400.00, November 12th, 1869, patented to William A. Rust May 10th, 1870.

In reference to the northwest quarter of the southeast quarter of section 22, the tract book shows the entire south half of section 22, placed as swamp land under the act of September 28th, 1850. Cancelled the same as the others with a red line, and sold at \$340.00 to Wm. A. Rust, November 13th, 1869, and patented to him May 10th, 1870.

With reference to the northwest quarter of the northwest quarter of section 28, it shows the entire northwest quarter included in the swamp land list the same as the others, and cancelled the same, and sold to Wm. A. Rust for \$492.00, November 13th, 1869, and patented to him May 10th, 1870.

The north half of the northeast quarter of section 35 was included in the same swamp land list and cancelled the same, and sold to Addison P. Brewer at \$100.00, October 31st, 1866.

He further says (p. 51): Wm. A. Rust made the purchase referred to at a public sale. In reference to the plat book, which is marked "resurveyed," he says: "This resurvey plat is certified to May 12th, 1858, and in our office is recognized as the existing plat, and the one now in force. other plat recognized in the office as in force. There are indications on that plat of resurvey of state swamp lands, indicated in the same manner, that they are upon the plat of the original survey. And upon the plat of the resurvey some of the same pieces of land are marked with the letters indicating swamp land that are marked upon the plat of the original survey. According to the plat of resurvey and the marks indicating the state swamp lands, the southeast of the southeast quarter of section 20 is not state swamp land and the northwest quarter of the southwest quarter of section 21 is not. The northwest of the southeast of 22 is not.

The northwest of the northwest of section 28 is not, and the north half of the northeast quarter of section 35 is not."

On page 53 he testifies as follows:

- "Q. Do not the entries upon the face of the resurveys show that the lands were sold by that, and that that plat was the plat recognized by the government from the time of the resurvey down?
 - A. Certainly.
- Q. Does it now show upon its face sales made by the government prior to the time you took possession?
 - A. Yes, sir.
- Q. So that records of your office would show all the plats of the resurvey?
- A. Only from June 3d, 1858, the date it was received at the land office. It was certified May 12th, 1858. The plat of resurvey shows it was resurveyed in 1856 by Geo. H. Cannon, Deputy Surveyor. The month is not given."

Ninth. Exhibit 33, p. 53, and Exhibit 34, p. 54, which are patents from the Governor of the state to Edward W. Sparrow, including the lands in question in this suit, bearing date the 14th day of October, 1887.

Tenth. Exhibit 35, p. 55, a deed from Edward W. Sparrow to the plaintiff, including the lands in question, bearing date the 31st day of October, 1887.

Eleventh. The testimony of Geo. W. Doxie, p. 57, showing that he examined the lands in January, 1887, for Mr. Sparrow, and that they were then wild and uncultivated and were worth two thousand dollars and over.

Twelfth. Exhibit 37, page 59, Exhibit 38, page 60, and Exhibit 39, page 60, which are patents from the United States to Wm. A. Rust, of the lands in controversy on sec-

tions 20, 21, 22 and 28, and several mesne conveyances showing a conveyance of an undivided one-half of said lands to Amasa Rust and Charles A. Rust, also Exhibit 51, page 63, which is a patent from the United States to Addison P. Brewer, conveying the land in question in section 35, also mesne conveyances, page 64, showing the conveyance of an undivided one-third of said land to Amasa Rust and Charles A. Rust.

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THE EVIDENCE ON THE PART OF THE DEFENDANTS. FIRST.

THE DEFENDANTS GAVE EVIDENCE SHOWING THAT IN 1842, THE UNITED STATES AUTHORITIES WERE INFORMED BY THE ACTION OF THE LEGISLATURE AND GOVERNOR OF MICHIGAN THAT GROSS FRAUDS HAD BEEN COMMITTED IN THE SURVEYS WHICH HAD BEEN MADE OF LANDS IN THE STATE, AND THAT THE UNITED STATES AUTHORITIES, ACTING THEREON, PROCEEDED TO ASCERTAIN WHETHER SUCH FRAUDS HAD BEEN COMMITTED, AND UPON EXAMINATION MADE, DETERMINED THAT THEY HAD BEEN COMMITTED, AND TO CORRECT THEM, MADE RESURVEYS, WHICH WORK WAS CARRIED ON FROM YEAR TO YEAR UNTIL 1857, AS FOLLOWS:

1st. Exhibit 57, page 64, a letter from the Governor of Michigan to the President of the United States, dated February 3, 1842, inclosing a joint resolution of the Legislature of Michigan in relation to the resurvey of certain townships of land therein mentioned.

The resolution recites that "Whereas, it has been satisfactorily made to appear to this Legislature that large districts of lands lying within the limits of the State of Michi-

gan, have been returned by some of the Deputy United States surveyors to the General Land Office as surveyed, where no surveys whatever have been made, or where the surveys have been so imperfectly done as to be utterly valueless; and Whereas, the United States Surveyor-General of this land district has caused the lands so represented as surveyed to be offered for sale, to the very great injury of the State of Michigan and the citizens thereof, therefore," it was resolved "That the President of the United States be requested to cause the subdivisions of the following townships of land, situate within the State of Michigan, and which have been represented to have been surveyed, but which have either not been surveyed, or have been so imperfectly surveyed that said work is valueless, to be surveyed at as early a day as may be consistent, viz:"

Certain towns are specified, including in all eighty-one townships. It was further resolved that the Governor be requested to transmit such preamble and resolution to the President of the United States.

The letter bore the endorsement "Referred by President of U. S."

2d. Exhibit 58, page 65, which is a letter from the Commissioner of the General Land Office to the President, referring to said letter of the Governor and resolution of the Legislature, in which he recommends to the President "that a copy of the memorial be immediately referred to the Surveyor-General at Cincinnati, for a full report of all the facts which it may be in his power to furnish, on receipt of which, an immediate examination of portions of the field work by one of his most trusted deputies could, if considered expedient, be ordered," etc.

Endorsed upon this recommendation of the Commissioner

is the President's order referring it to the Surveyor-General, and that the Governor be informed of the measures to be adopted. A copy of the instructions was sent to the Governor of Michigan.

3d. Exhibit 59, pp. 67 to 68, which is a letter, dated February 21, 1842, from the Commissioner of the General Land Office to the Governor, inclosing instructions sent by him to the Surveyor-General at Cincinnati, requesting the Surveyor-General to make a full report of all the facts in his power.

4th. Exhibit 60, p. 68, which is a response by the Surveyor-General, dated March 4.1842, in which it appears (p. 69) that intimations had been received in the summer of 1840, by the Surveyor-General, that frauds had been committed in the surveys, and he recommends (p. 71) that an experienced deputy surveyor, say Mr. William A. Burt or John Mullett, be employed to go on the ground and examine each township, or a sufficient number of them in each district to satisfy himself concerning the whole, and ascertain and report the exact condition of the surveys in each.

On pages 71 and 72 he explains the process by which frauds may be committed in the surveys, and the return of the field notes of the survey so made, that the fraud could not be detected in the Surveyor-General's Office.

5th. Exhibit 61, pp. 74 to 75, which is a letter from the Commissioner of the General Land Office to the Governor of Michigan, dated April 2, 1842, informing him of the report which had been made by the Surveyor-General, and inclosing a copy of the instructions which had been issued by the

Commissioner of the General Land Office to the Surveyor-General upon the receipt of the report of the letter.

By these instructions to the Surveyor-General, he is requested to send an experienced deputy surveyor to go on the ground and examine each township, or a sufficient number of them in each district to satisfy himself concerning the whole, and ascertain and report the exact condition of the surveys in each, and if it should be found that the surveys in the townships indicated, or any of them, are defective in field work, then new surveys in all such cases should be made, etc.

6th. Exhibit 62, page 75, which is a letter of instructions from the Surveyor-General to William A. Burt, dated April 11th, 1842. After referring to the resolution of the Legislature of Michigan, and the action by the President and the Commissioner of the Land Office thereon, and the information obtained by his own inquiries, he says (p. 76): "It is very probable, from the respectable source whice the information now obtained emanates, that fraud to a greater or less extent has been practiced on the office and on the public interests, and, of course, false returns made. To ascertain whether this be a fact, and to what extent those frauds exist, is the object for which I now commission you."

He directs him to proceed and make examination of the towns referred to in the resolution of the Legisature.

7th. Exhibit 63, p. 77, which is a letter from the Surveyor-General to the Commissioner of the General Land Office, dated August 1st, 1842, in which it is said that "Mr. Burt has executed the trust assigned to him and made his report to this office, and I hereby transmit to you a copy thereof together with a copy of the Surveyor-General's instructions to him. The report of Mr. Burt, you will see, furnishes

abundant proof that the surveys examined by him are grossly defective and fraudulent, and there is a high probability that the remaining townships in the same contracts, not examined by Mr. Burt, are as defective as those which he inspected."

8th. Exhibit 64, p. 78, which is a letter from the Commissioner of the General Land Office to Hon. A. S. Porter, who was a United States Senator from the State of Michigan, dated October 4th, 1842. After referring to the report mentioned in the preceding exhibit, he says: "From all which it appearing that the surveys, as far as examined, were found grossly defective and fraudulent, it is designed to issue instructions from this office for the necessary resurveys in a few days."

9th. Exhibit 65, pp. 78 to 79, which is a letter from the Surveyor-General to the Commissioner of the General Land Office, dated April 27th, 1843. After referring to the communication of the Commissioner of the General Land Office to him, by which he was instructed to take measures to cause the surveys to be corrected and completed, and advising him that the sum of four thousand dollars had been set apart for that object, he says, "It is shown by Mr. Burt's report, that in the townships examined by him a very small portion, if any, of the lines had been surveyed or marked; and what was found to have been done was so erroneous and defective that little or none of it can be relied upon, but nearly all will have to be resurveyed and marked."

He further suggests that the sum set apart will not be sufficient for the work.

10th. Exhibit 66, p. 79, which is an extract from the report of the Surveyor-General for the year 1843, in which there is recommended the appropriation of \$10,400 "for re-

surveying erroneous and defective surveys north and west of Saginaw Bay, Michigan."

11th. Exhibit 67, pp. 80 to 82, which is a letter from William Woodbridge, who was then United States Senator for Michigan, to the Commissioner of the General Land Office, dated September 16th, 1844, showing measures that he had taken to get appropriations for resurveys in Michigan, to remedy what he describes "outrageous frauds in the surveys," and in which he says: "The great and increasing evils suffered by the State of Michigan, by suffering these false returns of surveys, alluded to above, to remain without correction, I am sure I need not press upon your consideration. They are of incalculable extent, and have already produced a deep feeling of wrong done throughout our state."

12th. Exhibit 68, pp. 82, 83, 197, which is a letter from the Commissioner of the General Land Office to Hon. Wm. Woodbridge, dated September 30th, 1844. After referring to the amount of the appropriation apportioned to be expended "in correcting the fraudulent surveys north and west of Saginaw Bay," he says: "All the other cases of erroneous or defective surveys in Michigan will be examined and instructions issued as speedily as they can be prepared."

13th. Exhibit 69, p. 83, which is a letter from the Commissioner of the General Land Office to the Register and Receiver of the United States Land Office of Genesee, Michigan, dated October 1st, 1844, in which he says: "I am advised that from circumstances which are not explained, you cannot sell the lands north and west of Saginaw Bay by the new and corrected surveys, but only by the old, false and

fictitious ones. You will please to advise me if such is the fact, and the cause of it.

The plats of the fraudulent surveys should have been canceled immediately on the receipt of the plats of the new surveys, and proper references made on them to these new plats, so that the plats of the fraudulent surveys should not be used under any circumstances."

14th. Exhibit 70, pp. 83, 84, which is a report from the Commissioner of the General Land Office for the year 1844, in which it appears that the resurveys to the extent authorized has been completed, and says further: "Your instructions of the 20th ultimo directs the continuance of the resurveys in that quarter to a limited extent, and contemplates their completion when the necessary appropriations shall be made by Congress," and estimates \$8,500 "for resurveying forty-four townships of erroneous and defective surveys west of Saginaw Bay, Michigan."

Also an extract from a like report for the year 1845, (p. 84), in which it is said the work of resurveying will be put under contract "as soon as practicable, so far as the appropriation of ten thousand dollars, made by the act of the 3d of March last will pay for it." It contains an estimate of \$5.880.00 "for resurveying fourteen townships of erroneous and defective surveys west of Saginaw Bay, Michigan."

Also an extract from the report for the year 1846, (p. 85), in which quoting from Surveyor-General's Report it is said, "In the southern peninsula of Michigan, thirty-two townships of erroneous and defective surveys, north and west of Saginaw Bay, have been resurveyed, and the township plats made and transmitted to the General Land Office. * * * There is reason to believe, however, that many of the surveys heretofore made in the northern portion of the peninsula are erroneous and fraudulent, and that resurveys will have to be

made to a very considerable extent. Examination ought now to be made of the suspected districts, in order that resurveys, if necessary, may be made before the sales of lands shall embarass the proceeding."

Also an extract from a like report for the year 1847, (p. 85), quoting from the Surveyor-General's report, as follows: "The more the old surveys in the northern part of the peninsula are examined, the more ceatain it appears that a large portion of them has been so loosely and fraudulently made, that extensive resurveys will be necessary."

Also an extract from a like report for the year 1848, (p. 86), in which, quoting from the Surveyor-General's report, after referring to resurveys of four townships which were originally surveyed by John P. Allard, and part of the townships originally surveyed by John Brink, it is said: "From these returns, and the testimony of the men who assisted the surveyors in making the resurveys which they describe, it appears that Allard's field notes of his survey of those townships are almost wholly fictitious and fraudulent, and that Brink's are, to some considerable extent, of the same character."

He further says that Allard had three contracts, embracing in all thirty-two entire townships, and that Brink had two contracts, making together about twenty-four townships.

The report further says, "There are other surveys in this portion of the state that are strongly suspected, but enough is not known at present to justify the expression of any positive opinion against them."

It incloses an estimate of an appropriation of ten thousand dollars "for the correction of erroneous and defective surveys in southern Michigan."

15th. Exhibit 71, p. 87, which is a letter from the Commissioner of the General Land Office to Hon. Alpheus Felch, United States Senator for Michigan, dated Feb. 17th, 1849.

saying that he had sent a letter to the Chairman of the Committee of Public Lands, requesting him to have introduced in the general appropriation bill, an item of ten thousand dollars "for the correction of erroneous and defective surveys in southern Michigan."

16th. Exhibit 72, p. 87, which is a request of the Commissioner of the General Land Office, dated Feb. 17th, 1849, made to the Chairman of the Committe on Public Lands for the appropriation of said sum of ten thousand dollars for the correction of erroneous and defective surveys in southern Michigan.

17th. Exhibit 73, pp. 88 to 89, which is a letter from the Surveyor-General to the Commissioner of the General Land Office, dated July 10th, 1849, in which he says, "I beg leave to say that from examinations that have been made by Wm. A. Burt within the last three months, it appears that most of the field notes originally returned to this office by H. Nicholson, N. Brookfield and J. Brink, as containing a true description of surveys made by them under their respective contracts, dated 20th of July, 1838, 30th of November, 1839, and 13th of December, 1839, are fictitious and fraudulent."

After recommending an entire new survey, he says (p. 88): "The districts above referred to are all bounded on the east by the principal meridian, and lie between townships 17 and 24 North, in the State of Michigan."

THIS DISTRICT, THUS DESCRIBED, INCLUDES THE TOWN IN QUESTION, 18 NORTH, RANGE 3 WEST.

H. Nicholson was the Deputy Surveyor who surveyed said township. (See plaintiff's Ex. 30, p. 40 at p. 47.

The letter continues, (p. 88) and after saying that Mr. Burt is still in the wilderness pursuing his examinations, and

Orange Risdon is making similar examinations, he says: "I consider such an examination as they are making indispensably necessary to enable the government to know what frauds have been committed by surveyors in Michigan."

He further says (p. 89): "I have returns from Mr. Burt up to the 3rd of last month, and the surveys of every district, and of almost every township examined by him previous to that date proved to be fraudulent, as before stated."

18th. Exhibit 74. pp. 89 to 96, which is an extract from the report of the Commissioner of the General Land Office for 1849, which, quoting from the Surveyor-General's report, by which it appears that William A. Burt and Orange Risdon were employed to examine, and for that purpose were furnished with copies of plats "of about two hundred and eighty townships," says: "The district assigned to Mr. Burt extended from the south boundary of township seven north, in range one west, north and west of Grand Traverse Bay of Lake Michigan."

THIS DISTRICT WOULD COVER THE TOWNSHIP IN QUESTION.

He further says (pp. 89, 90, 117) "field notes have been received from Mr. Burt describing examinations made by him in districts originally surveyed by Robinson Thomas, C. W. Christmas, Joel Wright, Henry Nicholson, J. N. Higbee, Noah Brookfield, John Brink, Henry Brevoort, Jr., Jas H. Mullett, John P. Allard, Slyvester Sibley and John Hodgson, which districts are numbered on an accompanying diagram."

Among other things, he states (p. 90) that the returns of surveys in seven districts, "embracing ninety-one townships, are grossly fraudulent, the greater portion of the field notes thereof being wholly fictitious, or descriptive of lines and corners that were never established. For a more particular account of the surveys examined by Mr. Burt see statement N."

He further says: "It is probable that at least one hundred

and fifty townships would require to be resurveyed in this peninsula."

Statement N, annexed to the report, appearing on pages 94, 95 and 96, includes township eighteen (18) north, range three (3) west, which is the town in question in this suit, as surveyed by Henry Nicholson. Opposite of this township, in the margin, is this statement (p. 95): "This district was contracted for by Mr. Nicholson in 1838, the next year after he had made his returns of the one described above, and his work in it is found to be no better, but rather worse than it was in that. Examinations were made in every township, and there can be no doubt that it is bad throughout."

The record states (p. 96) that the document marked P, referred to in the foregoing exhibit (p. 96) is a map accompanying the foregoing report, showing the territory covered by contracts in schedule "N," showing town eighteen (18) north, range three (3) west, to have been covered by Henry Nicholson's contract.

This report estimates an appropriation of twenty thousand dollars for resurveying and correcting erroneous and fraudulent surveys in Michigan, in addition to the unexpended balance of former appropriations for this purpose. (P. 96.)

19th. Exhibit 76, p. 100, which is an extract from Executive Document No. 2, Senate, quoting from the report of the Commissioner of the Land Office for 1850, which on page 101 contains an estimate of ten thousand five hundred dollars, appropriation for resurveying and correcting erroneous surveys in the Lower Peninsula of Michigan, and after referring to various townships which have been put in contract for resurvey, the report says (p. 102): "Resurveys have also been made in other districts that were reported fraudulent in the field notes of examinations made last year, but as those examinations were made in a superficial manner, giv-

ing, it is true, sufficient evidence of the imperfect character of the original surveys in each district, but not in every township, the deputies intrusted with the resurveys, were required before commencing the resurvey of any township, to ascertain the character of the old surveys, and not to make any resurveys where they were unnecessary."

On page 103, an estimate of resurveying twenty-five townships in the Lower Peninsula of Michigan, of ten thousand five hundred dollars is stated.

At page 103, the record states that "schedule 'D,' annexed to the report, is a map of the State of Michigan, entitled 'Sketch of the Public Surveys in Michigan,' and shows state of surveys in Michigan, and indicates the towns that are defectively surveyed.

18–3 West is indicated on the map as defectively surveyed."

20th. Exhibit 77, p. 103, which is a letter from the Surveyor-General to the Commissioner of the General Land Office, dated March 5, 1851. After referring to the appropriations made for the resurvey, and that the resurvey should be made either by an entire resurvey, or by re-establishing and correcting old surveys as far as practicable, the report says (pp. 103, 104): "The latter method is preferable and perhaps indispensable, where sales have been made in a township, but in other cases where the old surveys are very defective, and the lines and corners much out of place, it is believed an entire new survey should be made without reference to the old work, except to mention such portions of it as came within the observation of the deputy making a survey, for the expense and labor of re-establishing and correcting old lines is found to be nearly, if not quite, equal to that of making an entire resurvey. The office work, on account of these fraudulent surveys, is in an unsettled and unfinished condition."

21st. Exhibit 78, p. 105, which is an extract from the report of the Commissioner of the General Land Office for the year 1851. Referring to the swamp land grant, the report says (p. 105): "Whenever the selections in any one land district shall be completed and closed, and the lists finally approved, and not before, it is designed to issue the patent required by the act."

On page 106, referring to the resurveying which is now going on, the report says: "It is deemed of the greatest importance that such resurveys as are necessary to be made in this district, should be ordered with as little delay as practicable."

On page 106, the report says: "The injury to the government in consequence of the frauds committed in the surveys in this state, consists not only in the pecuniary loss on account of the surveys, but in the false reports of the character of the country, some of the finest portions of which being represented in the original surveys as indifferent, second and third rate land, and sometimes swamp, have been rendered unsaleable for many years."

22d. Exhibit 79, p. 107, which is a letter from the Surveyor-General to the Commissioner of the General Land Office, dated Feb. 10th, 1852. This letter refers to a letter of the Commissioner of the General Land Office of the preceding November 25th, requesting a plan of operation in reference to the resurveys (p. 107.) The Surveyor-General recommends for resurvey for the present season (1852)to "carry on as far as possible to completion the resurveys in the Lower Peninsula, beginning with the district west of Saginaw Bay as of the first importance, it being situated in the country where the sales are constantly making, and continuing with the districts nearest Grand Traverse Bay until all are completed." (P. 107.)

On page 109, the Surveyor-General again refers to his "plan of operations for the resurvey of the present season."

On page 109, he says: "It would, therefore, appear that in any of the defective or fraudulent surveys the marks of the original surveys should not be respected, but obliterated, making entire new surveys of such directs and connecting them with the adjoining regular surveys so as not to interrupt the regularity of the townships and ranges."

This letter contains a report of the Surveyor-General made by A. S. Wadsworth, Deputy Surveyor, on the character of the country between Grand River and the Straits of Mackinaw, which includes territory covering the township in question, 18 north, range 3 west, which report says (p. 110): "The entire section of country has, until recently, been considered low, level and swampy, with pine, cedar, balsam and hemlock ridges, cold, sterile and unfit for cultivation. The furthest possible from this are the facts in reference to this region."

23d. Exhibit 80, p. 112, which is a letter from the Commissioner of the General Land Office to the Surveyor-General, dated March 8th, 1852. Referring to the "subject of the resurveys in Michigan, which it is designed to undertake the coming season. The surveys about to be undertaken will be designed to remedy two classes of defects and frauds.

"First Class-Incomplete surveys." * * *

"Second Class—Fraudulent surveys (p. 112). Where there is no evidence found in the field of any good intent on the part of the Deputy Surveyor to comply with the terms of his contract, no system being manifest in the field work, and an entire absence of marks and monuments whereby to designate the corners, and where no lines are traceable.

In this class of cases the lines will have to be run and corners established, as if originally, and all the old irregular lines and corners must be most carefully and thoroughly obliterated."

24th. Exhibit 81, p. 113, which is an extract from the report of the Commissioner of the General Land Office for the year 1852.

This report (p. 114) contains "Estimates for the appropriations for the surveying department, for the fiscal year ending June 30th, 1854.

To defray the expenses of examining and correcting old, imperfect and defective surveys in the northern part of the Lower Peninsula of Michigan, three thousand dollars."

The Surveyor-General's report in this exhibit, speaking of the resurveys, says (pp. 115, 52): "The resurveys of the past season, some of the townships of which are situated in both the Grand River and Saginaw land districts, will require new lists in conformity with your instructions of the 4th ultimo. These lists, which will be supplemental, will be made up as soon as practicable after the plats of the resurveys are made."

Again the report says (p. 115): "In some instances in the original survey, lakes covering many hundred acres, have been laid down upon the maps where none existed, thus covering with water a large area of beautiful country, which, but for these frauds, might long since have been opened for sale and settlement.

There are upwards of sixty townships, situated east of the meridian, which have been reported fraudulent, and no doubt exists in reference to the bad condition of the surveys. The old districts of subdivisions, situated east of the meridian and north of the third correction line, have been partially examined, and there is reason to believe that the surveys therein are, to a great extent, fraudulent."

25th. From the report of the Commissioner of the General Land Office for the year 1853. (Page 115 at page 116.)

It contains an "estimate of appropriations for the surveying departments, for the fiscal year ending June 30th, 1855."

"For continuing the examinations and corrections of old, imperfect and defective surveys in the Lower Peninsula of Michigan, north of the third correction parallel, and east and west of the meridian, being forty-eight townships, twenty thousand one hundred and sixty dollars."

On page 117, the Surveyor-General's report, speaking of examinations and resurveys made, says: "In the townships resurveyed and corrected, portions of the lines were run and found to be established; other lines were run, but seemed never to have been corrected, while other portions of the survey were found to be entirely fraudulent, no lines ever having been run."

On page 118, this report further says: "The examinations in the four districts embraced in my present estimate represent that in many of the townships no lines have ever been run. They also serve to show, as all examinations of defective surveys in this State have ever done, that the field notes of the original surveys are no index to the true and real character and value of the country of which they purport to give a faithful description."

"Instances are numerous where valuable agricultural and pine lands are found to exist in places of what has been reported as dense, and in some cases, impassable swamp or nearly worthless lands."

26th. The report of the Commissioner of the General Land Office for the year 1854, (p. 119) in which he says (p. 139): "The Surveyor-General of Michigan has successfully overcome most of the difficulties incident to the fraudulent

surveys heretofore made, and is pursuing the only plan by which the evils resulting therefrom can be remedied."

On page 119, the Surveyor-General says: "It will be necessary to make other resurveys than those now estimated for, but they have been left for another season, as I believe the true policy in carrying on this work to be to undertake no more than can be contracted to deputies whose experience, etc., have been tested and approved."

The report contains an "estimate for resurvey in the Lower Peninsula for the year ending June 30th, 1856, ten thousand eight hundred dollars." (p. 119.)

27th. Report for the year 1855 (p. 119), extract from Surveyor-General's report. This report refers to the passage of the Act of August 4th, 1854, making an appropriation for continuing the resurveys in this state.

It further says (p. 120): "As early in the spring of 1855 as it was practicable to enter the field, Mr. Cannon resumed his work, and contracts were made as fast as practicable with deputies of experience for the resurvey and correction of fifty-six townships and fractional townships."

At page 120 the report says: "The resurveys have cancelled all the old office work that may have heretofore been done in such townships, consequently they erroneously represent the real condition of office labor in those towns."

This report, at page 120, contains a "statement and estimate of uncompleted field work in the State of Michigan, on the 1st of December, 1855, exclusive of that under contract, as represented by statement A, accompanying this report."

This statement of uncompleted field work contains the following (p. 120): "Townships 18, 19 and 20 north, 1, 2 and 3 west, character of work, resurvey." (Town 18 north, range 3 west, is the town in question.) Under the head of

remarks, opposite these townships, appears the following: "It is intended to contract all this work as fast as appropriations will admit, and experienced and reliable deputies can be found to undertake surveys of the character of those now remaining to be done."

The same report, at page 121, contains an estimate of appropriations for the year ending June 30th, 1857, for the resurvey of seven townships, two thousand seven hundred and thirty dollars, and for the correction and resurvey of eighteen townships, seven thousand and twenty dollars, making a total of nine thousand seven hundred and fifty dollars,

28th. Report for the year 1856 (p. 122) from the report of the Commissioner of the General Land Office, which says: "It has been determined to complete the resurveys of about 75 townships, the greater portion of which are embraced in outstanding contracts, to complete the archives and then close the office. For the attainment of this object, measures are contemplated so as to be able to turn over the archives to the authorities of Michigan, under the Act of the 12th of June, 1840, by the 30th of September, 1857."

The Surveyor-General's report says (p. 122): "That it is not to be inferred that in the opinion of that office no other defective, imperfect or fraudulent surveys exist in Michigan than those for the resurvey of which appropriations have been made, but that it is well known that there are several contracts, both in the Upper and Lower Peninsula of the's State, in which the surveys are in places defective, and in some cases fraudulent."

29th. It will be observed that the resurvey of the township in question, 18 north, range 3 west, was resurveyed in 1856. See field notes, Ex. 114. pp. 159 to 168 at p. 168.

30th. Exhibit 82, p. 126, which is a letter from the Surveyor-General to the Commissioner of the General Land Office, dated June 11th, 1847, which (p. 1847) referring to the instructions of the Commissioner of the General Land Office to report the quantity of swamp lands unfit for cultivation, that has been surveyed and returned as public land in each land district, says (p. 126):

"The old surveys made in this district do not furnish data even sufficient for that; for the extent of the swamp on either side of the lines passing through them, is not noted, either on the plats or in the field notes."

SECOND.

The defendant put in the following evidence which shows that the course taken, where resurveys were made and reported was this: The resurveys took the place of the old surveys in the government offices, and where lists had been made of swamp lands in a township based upon the minutes of the original survey, upon which lists no patent had been issued for any of the lands in the town, new lists were made from the resurveys, which new lists superseded and abrogated the lists made from the original surveys, and stood in the place of them, and upon such new lists the patents were issued. When the list made upon the resurvey was adopted the old list was treated as null and void for all purposes.

1st. Exhibit 69, p. 83, which is a letter from the Commissioner of the General Land Office to the Register and Receiver at Genesee, Michigan, in which he says: "The plats of the fraudulent surveys should have been cancelled immediately on the receipt of the plats of the new surveys, and proper references made on them to these new plats, so that the plats of the fraudulent surveys should not be used under any circumstances."

2d. Exhibit 79, pp. 107 to 112, which is a letter from the Surveyor-General to the Commissioner of the General Land Office, dated February 10th, 1852. At page 109, he says: "It would, therefore, appear that in any of the defective or fraudulent surveys the marks of the original survey should not be respected, but obliterated, making entire new surveys of such districts and connecting them with the adjoining regular surveys so as not to interrupt the regularity of the townships and ranges."

3d. Exhibit 80, p. 112, which are the instructions from the Commissioner of the General Land Office to the Surveyor-General, of date March 8th, 1852. At page 112, he says: "In this class of cases (fraudulent surveys) the lines will have to be run and corners established as if originally, and all the irregular lines and corners must be most carefully and thoroughly obliterated."

4th. Exhibit 81, p. 113, which is from the report of the Commissioner of the General Land Office for the year 1852. At page 115, he says: "The resurveys of the past season, some of the townships of which are situated in both the Grand River and Saginaw land districts, will require new lists, in conformity with your instructions of the 4th ultimo. These lists, which will be supplemental, will be made up as soon as practicable after the plats of the resurveys are made."

He further says (p. 115): "The work which has been finished, has been executed in a manner highly satisfactory, and fully confirms the opinions heretofore expressed in former reports from this office, that much of the country heretofore represented in the original surveys as indifferent, second and third rate land, and swamp and lake, is proven by the resurveys, to be among the choicest land in the Lower Peninsula of Michigan."

5th. The report of the Surveyor-General for the year 1853, at page 118, referring to the examinations made in four districts, says: "They also serve to show, as all examinations of defective surveys in this state have ever done, That the field notes of the original surveys are no index to the true and real character and value of the country of which they purport to give a faithful discription. Instances are numerous where valuable agricultural and pine lands are found to exist in place of what has been reported as dense, and in some cases impassable swamp or nearly worthless lands."

Again, the Surveyor-General says, in his report for the year 1855, p. 120: "The resurveys have cancelled all the old office work that may have heretofore been done in such townships, consequently they erroneously represent the real condition of office labor in those towns." He says, on the account of this, he has prepared an entire new map of the state.

6th. Exhibit 91, page 133, which is a letter of instructions from the Commissioner of the General Land Office to the Surveyor-General, dated October 4th, 1852, in which the Commissioner directs as follows (p. 133): "In making out supplemental lists, embracing the swamp lands in the townships recently surveyed, you will prepare three copies, one for your own office, one for the proper register, and one for this office.

In those townships resurveyed during the past season, it will be necessary to furnish new lists, in explanation of the former ones, but you will be careful to designate them as having been made in lieu of the former ones."

7th. Exhibit 83, page 126, which is a letter from the Commissioner of the General Land Office to the Surveyor-General, dated June 7th, 1853, which says: "In adjusting the swamp land selections in the Grand River district, (Mich.) a difficulty has arisen in regard to the proper construction of the supplemental list transmitted to this office, dated December 8th, 1852. In my letter of 4th of October last, the following directions were given: 'In those townships resurveyed during the past season, it will be necessary to furnish new lists, in explanation of the former ones, but you will be careful to designate them as having been made in lieu of the former ones.'

This instruction appears to have been lost sight of, as the supplemental list above referred to, is simply headed 'Supplemental list of swamp lands, etc.' * * * The questions, as you will perceive from the foregoing, are whether the supplemental list is to be regarded as only corrective of the former list, or whether it is to be taken entirely in lieu of the original in the corresponding townships. As the work upon this list has been suspended on account of the foregoing difficulties, I have to request that you will give the matter your early attention, and that you will be explicit in your answer as to the proper construction of said supplemental list."

8th. Exhibit 92, pages 133, 134, is a reply to the foregoing letter from the Surveyor-General to the Commissioner of the General Land Office, dated June 24th, 1853, and says:

"In making the supplemental list of swamp lands in townships resurveyed and platted up to December 6th, 1852, your instructions of 4th of October, 1852, were carefully observed, but it should have been stated either at the head of the list, or in the letter transmitting it, that it was intended to be placed on file in your office in lieu of the former list.

IN ALL CASES OF RESURVEYS, A LIST OF SWAMP LANDS IS MADE UP FROM THE PLATS OF RESURVEYS WITHOUT ANY REFERENCE WHATEVER TO THE OLD PLAT OR TO THE ORIGINAL LIST MADE OUT FROM THE LOT (OLD) PLATS. The question as to whether the original or the supplementl list should govern, it was supposed would be decided at your office. As the question is submitted, however, it seems to me that the supplemental list, if made at all, should in all cases govern, and in fact, it should be placed in lieu of the original list as the plats of resurveys take the place of the original plats whenever any plats are made of resurveyed townships. IN ALL THE LISTS HEREAFTER TO BE MADE UP AND FORWARDED, WHERE THE ORIGINAL LIST HAS ALL-READY BEEN SENT ON, THE SUPPLEMENTAL LIST WILL BE CONSIDERED AS A SUBSTITUTE FOR THE ORIGINAL, TO TAKE ITS PLACE ON THE FILES, MAKING THE ORIGINAL LIST OF NO MORE ACCOUNT THAN ARE THE PLATS OF THE ORIGINAL SURVEY."

9th. Exhibit 86, p. 128, which is a letter from the Commissioner of the General Land Office to the Register at Ionia, dated September 5th, 1853, which, after stating that certain descriptions named in township 8 north, range 2 west, Ionia district, are confirmed swamp selections and will hereafter be approved as such to the state, says: "The east half of the southeast quarter of section 23, north half of northwest quarter of section 30, same township and range, were also selected but will

not be approved, the same not appearing in the subsequent list of the Surveyor-General, which was to supersede the one previously made."

10th. Exhibit 93, p. 134, which is a letter from the Surveyor-General to the Commissioner of the General Land Office, dated October 29th, 1853, which says: "I transmit herewith supplement list No. 2 of swamp lands in the Grand River land district. I have, in obedience to your instructions, indicated in the heading of this list that it is intended to abrogate and supersede all lists of swamp lands heretofore made of townships contained within it."

11th. Ex. 94, p. 134, which is a reply by the Commissioner of the General Land Office to the Surveyor-General to the last exhibit, dated November 7th, 1853, saying: "Your letter of the 29th ultimo, transmitting supplemental list of swamp and overflowed lands in the Ionia district, Michigan, intended to abrogate and supersede all lists of swamp lands heretofore made of townships contained within it, has been received, The original list will be altered so as to conform to said supplemental list."

12th. Ex. 95, p. 135, which is a letter from the Surveyor-General to the Commissioner of the General Land Office, of date January 31st, 1855, which says: "I inclose herewith a list of the swamp and overflowed lands in the Cheboygan land district, contained in townships surveyed and platted up to January 15th, 1855, which townships have not been included in any former list. With this list it is believed that a description of the swamp and overflowed lands in every township in this state have been transmitted to your department.

UP TO THE PRESENT TIME AS FAST AS TOWNSHIPS HAVE BEEN RESURVEYED, NEW LISTS OF THE SWAMP LANDS IN SUCH TOWNSHIPS HAVE BEEN PREPARED FROM PLATS OF THE NEW OR RESURVEY, AND FORWARDED TO YOUR OFFICE, AND TO THE PROPER DISTRICT LAND OFFICER, TO SUPERSEDE AND TAKE THE PLACE OF THE LIST BEFORE PREPARED AND FURNISHED FROM THE PLATS OF THE OLD AND FRAUDULENT SURVEYS. I have now to ask whether it will be proper to continue to furnish as heretofore new lists of the swamp lands in townships that may hereafter be surveyed."

13th. Exhibit 96, p. 135, which is a reply from the Commissioner of the General Land Office to the Surveyor-General to the last Exhibit, dated Feb. 12th, 1855, which after acknowledging the receipt of the letter and accompanying lists, says: "In reply to the inquiry made by you, I would state that it will be necessary for you to continue, as heretofore, to furnish new lists of the swamp lands in townships resurveyed to supersede and take the place of those prepared from the defective or fraudulent surveys."

14th. Exhibit 144, p. 202, which is a letter from the Commissioner of the General Land Office to THE GOVERNOR OF MICHIGAN, dated June 26th, 1880, replying to a letter from the Governor in relation to a list of lands. He says: "I have to state that the list referred to was superseded by a list reported from resurveys made in 1853. * * * And the lands described in the list sent by you are not included in the list made from the resurveys, consequently are not recognized as swamp selections, and the state of Michigan has no right thereto under and by virtue of said superseded list."

15th. Exhibits 145 and 146, pp. 203 and 204, which comprise a letter from the Governor of Michigan to the Secre-

tary of the Interior, dated July 27th, 1881, inclosing a list of lands as approved to the state, which list includes certain lands described, situated in townships 18 north, 3 west, 19 north, 3 west, 28 north, 3 west, 30 north, 9 west, and 36 north, 2 west, and requesting a patent for the same; and the reply to the letter made by the Commissioner of the General Land Office, in which he says that the lands have not been patented, "for the reason that the surveys under which they were selected, being found to be defective, a resurvey of the townships was made, and a new list of swamp land selections was reported thereunder, superseding the former list, in which said lands do not appear. They are, therefore, not recognized as swamp selections, and cannot be treated as such."

16th. Exhibits 147 and 148, pp. 205 to 206, which are of like character of the two last exhibits above, in which a letter is written by the Governor of Michigan to the Commissioner of the General Land Office, inclosing a list, and requesting patents, to which the Commissioner of the Land Office replies, under date of March 29th, 1882. After explaining in relation to certain tracts, he says (p. 206): following and remaining tracts described in your list were selected and reported to this office as swamp land in 1852, but subsequently the townships in which these lands are situated were resurveyed, on the ground that the original surveys were fraudulent, and new lists of swamp selections were made out, which superseded the old, and which do not contain the described tracts. * * * In view of the foregoing and the fact that the lands above described have been disposed of by the government, I am unable to comply with your request."

THIRD.

THE DEFENDANT PUT IN THE FOLLOWING ADDITIONAL EVIDENCE SHOWING THAT THE UNITED STATES AUTHORITIES REFUSED, IN ALL CASES, TO RECOGNIZE TWO LISTS OF LANDS, ONE MADE UP FROM THE OLD SURVEYS AND THE OTHER FROM THE RESURVEYS, IN ANY TOWNSHIP.

1st. Exhibit 6, p. 20, which is a letter from the Surveyor-General. Charles Noble, to the Governor of Michigan, dated January 3d, 1851, in which he says: "I cannot find in the law of Congress, or in the instructions to me from the General Land Office, any authority for designating a portion of the swamp lands from the notes of the surveyors returned to this office, and a portion by a resurvey. My construction of the instructions were that the whole were to be designated either in the one way or the other."

2d. Exhibit 121, pp. 173 and 174, which is a letter from the Commissioner of the General Land Office to the register at Detroit, dated June 18th, 1864. In answer to inquiries in relation to a list made up from the resurveys in a township where a list had been made from the old surveys which had been approved and a portion of the selections patented to the state, based upon such approved list, he says: "The supplemental list D, to which you refer, was made from the resurveys and was originally intended to abrogate or supersede the old list in the townships contained in said supplemental list D, but inasmuch as the selections under the old surveysin that portion of Detroit district had been acted upon and carried into patent, that course was found to be impracticable. As this office cannot recognize two lists of swamp selections for the same townships made from different and conflicting surveys, and having, as stated, acted upon one, we must of necessity ignore the other."

3d. Exhibit 122, p. 174, which is from the report of the Commissioner of the General Land Office for 1864, in which after saying that in certain townships swamp selections were made from the field notes of the original surveys, and subsequently resurveys were made, and from the plats of the latter, other and different selections in the same township were reported, the report says: "Prior to the reception of these we had approved and patented to the state most of the selections made under the old or defective surveys. New selections cannot, therefore, be admitted in the same townships where the first or old ones had been patented."

4th. Exhibit 143. p. 201 to 202, which is comprised of a letter from the Register and Receiver at Detroit, sending to the Commissioner of the State Land Office, under date of September 10th, 1877, a letter to them from the Commissioner of the General Land Office, of date September 6th, 1877, which letter, after referring to the fact that certain lands were included in a supplemental list made from a resurvey in townships where lists had been made upon the original survey, which lists had been approved and patents issued thereon, says (p. 202): "As this office cannot recognize two lists of swamp selections for the same townships made from different and conflicting surveys, and having, as stated, acted upon one, we must of necessity ignore the other."

5th. Exhibit 149. p. 207, which is a letter from the Commissioner of the General Land Office to the Register and Receiver at Detroit, dated March 25th, 1887. Referring again to a case where selections had been made from the old survey and the selections approved, and a portion of them patented to the State, and a new list had been made out, based on the resurveys, he says (p. 208): "As this office

cannot recognize two lists of swamp land selections for the same townships, made from different and conflicting surveys, and having, as stated, acted upon one, we must of necessity ignore the other."

FOURTH.

THE DEFENDANT PUT IN EVIDENCE THE FOLLOWING RECORDS RELATING TO THE LANDS IN TOWNSHIP 18 NORTH, RANGE 3 WEST, THE TOWNSHIP IN QUESTION, SHOWING THAT A RESURVEY WAS MADE OF THE LANDS IN THIS TOWNSHIP, AND A LIST OF THE SWAMP LANDS WAS MADE THEREFROM WHICH WAS APPROVED, AND WHICH SUPERSEDED THE LIST MADE UPON THE ORIGINAL SURVEY, UNDER WHICH SUPERSEDED LIST THE PLAINTIFF CLAIMS TO RECOVER. THE STATE, ON ITS PART, ASSENTED TO AND ACCEPTED THE RESURVEY AND THE LIST OF SWAMP LANDS MADE THEREFROM.

THE LANDS INCLUDED IN THE LIST MADE UPON THE RESURVEY WERE PATENTED TO THE STATE UPON THE REQUEST OF THE GOVERNOR OF THE STATE. THE LIST MADE UP ON THE RESURVEYS, APPROVED, AND PATENTED, DID NOT INCLUDE THE LANDS IN QUESTION.

1st. Exhibit 110, p. 149, which is a copy from the State Land Office of Surveyor-General's list No. 1, Grand River district. This list contains township 18 north, 3 west, and includes the lands in question, and is a copy of the same instrument put in evidence by the plaintiff whose copy was taken from the General Land Office instead of the State Land Office.

See plaintiff's Exhibit 26, p. 36.

It will be observed that this Exhibit 110 is a copy of the original list retained in the Surveyor-General's office. It

is found in the State Land Office at Lansing, because the files and records of the Surveyor-General's office were turned over to the State Land Office.

On the face of this list, township 18 north, 3 west, appears to be erased, while on the copy put in evidence by the plaintiff (p. 36), the marginal note says: "This selection in town 18 appears to be superseded by supplemental list No. 3," and at the left at the head of the list appears the letter "F," and in the certificate attached to both copies it appears that the letter "F" indicates that such township has been fraudulently surveyed.

2d. Exhibit 161, p. 231, which is a certified copy from the records at Washington of the Surveyor-General's list No. 1, Grand River district, based on the original survey, in which by the marginal note it appears that the selections in town 18 are superseded by supplemental list No. 3. This is a copy of the same instrument of which Plaintiff's Exhibit 26, p. 36, and Defendant's Exhibit 110, p. 149, are copies.

3d. Exhibit 162, p. 234, which is a copy from the General Land Office of approved list No. 1, Ionia, and is a copy of the same instrument of which Plaintiff's Exhibit 27, p. 37, and Defendant's Exhibit 111, p. 153, are copies. It will be observed that Exhibit 111 is from the State Land Office, and the lands in 18-3 west, appear on the face of the Exhibit to be erased, while on Exhibit 162, the lands appear to be erased, and on the margin it says: "Selections in this township superseded by supplemental list No. 3." See p. 234.

In this manner it is shown that it appears by this Surveyor-General's list, under which the plaintiff claims that township 18-3, the town in question, was superseded by sup-

plemental list No. 3, and was treated as erased from the original list. There were other towns contained in the list which are omitted from the Exhibit in pursuance of the parties' stipulation. (Exhibit 1, pp. 15, 16.)

4th. Exhibit 111, p. 153, which is a copy from the State Land Office of *Approved* List No. 1, Ionia, dated October 27th, 1853, based upon said Exhibit 110, p. 149, made from the original survey.

This approved list is a copy of the same instrument put in evidence by the plaintiff (Plaintiff's Exhibit 27, p. 37), which latter exhibit is taken from the General Land Office, and is the approved list under which the plaintiff claims title.

By this Exhibit 111, p. 153, the lands in township 18 north 3 west, which includes the lands in question, appear to be on the face of the exhibit, erased. There are other towns included in said approved list (Exhibit 111), which for brevity are not included in the Exhibit put in evidence.

These Exhibits, 110 and 111, show that in respect to town 18 north, range 3 west, the lists under which the plaintiff claims to recover were rejected and cancelled by the Surveyor General and by the Secretary of the Interior. The plaintiff's Exhibit 26, p. 36, which is from the office of the Commissioner of the General Land Office, shows the same fact by the marginal note.

5th. Exhibit 112, p. 157, which is a request from the Governor of the State of Michigan to the Commissioner of the Land Office, dated January 31, 1854, for a patent for the lands contained in approved list No. 1, Ionia, which is said Exhibit 111, from which the lands in town 18 north, range 3 west, are erased.

6th. Exhibit 113, p. 157, which is a patent to the state, dated March 17, 1857, issued in pursuance of said request of

the Governor, of date January 31, 1854. It is to be observed in relation to this patent:

First. That it shows by its recital (p. 158), that it is issued in pursuance of the foregoing request of the Governor, of date January 31, 1854.

Second. It conveys no lands in town 18 north, range 3 west.

Third. This patent was not issued until after the resurvey of town 18-3 west had been made. This resurvey was made in 1856, as shown by the field notes of resurvey, which was Exhibit 114, pp. 159 to 168, see at page 168.

Fourth. It is manifest that the lands in town 18-3 west were not patented, because of the facts shown by this resurvey, and at the time the patent was issued and accepted by the state, the lands in 18-3 west, contained in said approved list No. 1, Ionia, (said Exhibit 111), were treated as not belonging in the approved list, that township having been erased therefrom.

7th. Exhibit 114, pp. 159 to 168, being the field notes of the resurvey of said township 18 north, range 3 west, which show the survey to have been made during the year 1856, and the return made December 26, 1856. (See p. 168.)

8th. Exhibit 124, p. 175. This is Surveyor-General's Supplemental Aist No. 3, Grand River District. It includes township 18 north, 3 west. The heading of this list says: "This list being intended to supersede, or be in place of lists of swamp lands heretofore made of townships contained in it." It is dated May 13th, 1858. This list does not contain the lands in question. This means of course, that by the resurvey of the lands in that township, these lands were found not to be swamp lands.

oth. Exhibit 125, p. 177, a letter from the Surveyor-General to the Commissioner of the Land Office, forwarding among others, said Supplemental List No. 3, Grand River District.

of the Commissioner of the Land Office of the receipt from the Surveyor-General of said Supplemental List No. 3, Grand River District, in which he says: "I have to acknowledge the receipt of your letter of the 12th inst., transmitting three lists of swamp land selections under the act of September 28th, 1850, to supersede the lists of such lands heretofore reported to this office, made in the townships therein described, viz: * * * Original Supplemental List No. 3, Grand River District."

11th. Exhibit 127, p. 178, which is a copy from the state Land Office at Lansing of Approved List No. 10, Ionia, containing the lands in 18 north, range 3 west, contained in said Supplemental List No. 3, Exhibit 124, p. 175. Approved by the Secretary of the Interior, May 15th, 1866.

12th. Exhibit 128, p. 180, which is a letter from the Commissioner of the General Land Office to the Governor of Michigan, dated May 26th, 1866, transmitting a copy of said Approved List No. 10, Ionia, (above Exhibit 127), in which he says: "You will please to acknowledge the receipt of said list, and transmit your request for the patent to issue, on the receipt of which, or as soon thereafter as practicable, patent will be issued conveying the fee simple in said lands to the State."

13th. Exhibit 129, p. 180, is a letter from the Governor of Michigan to the Commissioner of the General Land Office

dated May 31st, 1866, acknowledging receipt of said copy of Approved List No. 10 of swamp lands in Ionia district, in which he says: "I also have the honor to request that the patents for said lands may issue to the State of Michigan as soon as practicable, conveying the fee simple title thereof to said State."

It is to be observed that, by this action of the Governor, this Approved List No. 10, Ionia, which supersedes the Approved List No. 1, which is plaintiff's Exhibit 27, p. 37, upon which plaintiff bases recovery, is recognized, assented to and acted upon by the Governor of the State of Michigan.

14th. Exhibit 130, p. 181, is patent No. 20 to the state, dated June 21st, 1866, of the lands in said Approved List No. 10, Ionia. It purports upon its face (p. 182) to be issued on the request of the Governor of the state, of date May 31st, 1866, and conveys the lands in town 18 north, range 3 west, which are contained in said Approved List No. 10, Ionia.

15th. This Supplemental List No. 3, Grand River District, on which the above Approved List No. 10 (Ex. 127) was based, and on which said patent (Ex. 130) was issued, is further recognized by the state authorities, as appears in Exhibit 136, p. 189, which is a letter from the Commissioner of the State Land Office to the Commissioner of the General Land Office, dated April 30th, 1874, in which he says he transmits for examination "the annexed list of lands, all of which are contained in Supplemental List No. 3 of swamp or overflowed land situated in the Grand River Land District, Michigan, meridian, in townships resurveyed. Said entitled list was intended to supersede or be in place of lists made prior thereto of the townships contained therein. The several descriptions sub-

mitted for examination have not been approved or patented to the state."

He therefore asks an approval of each of the parcels contained in the list with the view of patenting them. This letter expressly recognizes said Supplemental List No. 3 as intended to supersede and be in place of lists made prior thereto of the townships contained therein; that is, it is a recognition that said Supplemental List No. 3 superseded the plaintiff's Exhibit 26, p. 36, and plaintiff's Exhibit 27, p. 37, under which the plaintiff claims to recover.

The list inclosed in the letter appears on pages 190 to 193, and repeats the heading of the original of said Supplemental List No. 3, showing that it was intended to supersede or be in place of lists of landstheretofore made of townships contained in it, and specifies the parcels of land claimed by the letter to have been included in a list, but not approved or patented to the state, among which are some lands in said town 18, 3 west.

Exhibit 137, p. 193, is a reply to the above letter of the Commissioner of the State Land Office by the Commissioner of the General Land Office, explaining the situation in reference to lands in different townships contained in said list forwarded by the Commissioner of the State Land Office, and on p. 196, referring to lands in township 18 north, 3 west, says: "The following tracts are noted on our records as vacant. They will be embraced in a list at an early day, and submitted to the Hon. Secretary of the Interior for his approval."

Exhibit 138, p. 196, is a letter from the Commissioner of the State Land Office to the Commissioner of the General Land Office, dated August 12th, 1875. Referring to the above Exhibit 137, p. 193, and to the lands stated in that Exhibit to be vacant, and the statement that they would be submitted at an early day for approval, he says (p. 196): "We respectfully request that the lands be embraced in a list and submitted for approval without further delay, if consistent with your views."

Exhibit 139, p. 197, is a reply to the above letter. (Ex. 138, p. 196) by the Commissioner of the General Land Office, saying that certain of the lands referred to by the Commissioner of the State Land Office, and among them descriptions in 18, 3 west, "were embraced in list No. 20 of swamp and overflowed lands for the Ionia district, Michigan, and the following tracts, to-wit, (being a portion of the lands referred to) were embraced in list No. 21 of swamp and overflowed land for the Ionia, now Traverse City, district, Michigan, which lists were on the 10th inst, submitted to the Secretary of the Interior for his approval, preliminary to patenting the lands embraced therein to the State of Michigan under the swamp grant."

Exhibit 140, p. 198, is a copy of Approved List No. 20, Ionia, referred to in said Exhibit 130, p. 197, and contains the lands in town 18-3 west, referred to in the foregoing correspondence. The approval is dated September 10th, 1875.

Exhibit 141, p. 199, is patent No. 34 to the state, of said lands in town 18-3 west, contained in said Approved List No. 20, and the patent shows that it is issued at the request of the Governor of the State of Michigan.

16th. Exhibit 142, p. 200, is a certificate of the Commissioner of the State Land Office, dated June 16, 1892, showing that "no swamp lands in township 18 north, range 3 west, under Act of Congress approved September 28th, 1850, are included in an approved list on file in this office, except Approved List No. 1, Ionia, Approved List No. 10, Ionia, and Approved List No. 20, Ionia, nor in any patent except patents Nos. 20 and 34, Ionia District.

The above evidence shows that after the Surveyor-General's list, Exhibit 26, p. 36, and approved list Exhibit 27, p. 37, under which the plaintiff claims had been made, and after a request for patent of lands in this approved list, but before any patent issued a resurvey of town 18-3 was made, and after such resurvey this town was erased from those lists, upon the ground that the original survey was found to be fraudulent. A patent was then issued to the state, conveying lands in this approved list other than lands in town 18-3, and conveying no lands in that town. A new list was made by the Surveyor-General, upon the resurvey of the lands in this town, which list did not include the lands in question. This list was expressly intended to supersede and take the place of the list under which the plaintiff claims, which fact appears upon the face of the list. This list is transmitted to the Commissioner of the State Land Office at Lansing, who ackonwledges it as a list intended to supersede the former list. Based upon this list, a list of lands in town 18-3 is approved by the Secretary of the Interior and forwarded to the Commissioner of the State Land Office at Lansing. The Governor of Michigan requests patent to issue, in pursuance of this list, and patent was issued to the State in accordance with that request. The patent conveyed the lands in sown 18-3, according to the evidence of the resurvey. It did not include the lands in question.

These facts distinctly appear, viz: The land department of the government intended to act finally and did act finally in identifying the lands in town 18-3 upon the resurvey, it intended that the list made upon the resurvey should supersede the list made upon the original survey, and did not intend that both lists should be of force in respect of this town; the Governor and authorities of the state were informed of these facts, and acting upon such information, the Governor requested a patent to be issued, conveying the lands in accordance with the list based upon the resurvey, and a patent was issued accordingly.

The Governor knew, when he made the request for patent, that the state was not entitled to lands in this town upon both the original list and upon the list which was made to supersede such original list, and he made his election in behalf of the state to take the lands according to the list, which the Secretary of the Interior approved as the final and correct identification of the lands. This latter list was repeatedly acted upon by the state authorities and the Governor as the "one true" list, requesting subsequent conveyances to be made in accordance with the list, which requests were complied with.

FIFTH.

THE DEFENDANT PUT IN EVIDENCE, THAT IT WAS THE PRACTICE OF THE UNITED STATES AUTHORITIES, WHEN MAKING SELECTIONS OF ANY LANDS IN A TOWNSHIP TO MAKE THE SELECTIONS OF THE ENTIRE OF THE SWAMP LANDS IN THE TOWNSHIP AS FOLLOWS:

Exhibit 97, p. 136, which is the report of the Commissioner of the General Land Office for the year 1852, in which,

under date of November 2d, 1852, replying to a request for the approval of lands in advance of the regular list, he says: "Frequent applications from other states, having heretofore been made of a similar nature, it was found necessary to establish a rule not to act upon any isolated tracts without taking action upon the whole selections from any one district, for the reason that the final adjustment of the grant would thereby be much retarded."

SIXTH.

THE DEFENDANT PUT IN THE FOLLOWING EVIDENCE SHOWING THAT THE STATE RECOGNIZED THE SURVEYS MADE IN OTHER TOWNSHIPS, AND THE LISTS MADE UPON THEM, AS SUPERSEDING THE LISTS MADE AND APPROVED BASED UPON THE ORIGINAL AND FRAUDULENT SURVEYS.

1st. Exhibit 119, p. 171, which is a letter from the Commissioner of the General Land Office to the Governor of Michigan, dated February 24th. 1855, in which he says: "The Surveyor-General of Michigan has transmitted to this office a list of swamp and overflowed lands in the Cheboygan District. Michigan, in townships resurveyed and platted, which list abrogates and supersedes all lists of swamp lands heretofore made of the townships contained within it."

Then after giving a list of nineteen townships, he says: "The original selections in the foregoing townships made from the defective plats were approved in lists numbers 1, 2 and 3, Ionia District, Michigan, certified copies whereof were transmitted to your predecessor January 13th, 16th and 18th, 1854. In consequence of the alteration necessary, by reason of the list recently received, I have the honor to request a suspension of all action upon the lists

HERETOFORE FURNISHED YOU, SO FAR AS THESE SEVERAL TOWNSHIPS ARE CONCERNED, UNTIL THE DIFFERENCES CAN BE ASCERTAINED AND ADJUSTED."

2d. Exhibit 120, p. 172 to p. 173, is an extract of the report of the Commissioner of the State Land Office of Michigan to the Legislature, for the year 1855, which report says (p. 172): "This office was notified in February last by letter from the Commissioner of the General Land Office of the resurvey by the general government of considerable tracts of land embraced in the lists of swamp lands, including several townships in the northern part of the state, situated principally in the Ionia Land District, and the same have been, as directed, marked as suspended on our books."

The report shows that such action was taken by the Governor in response to said letter of February 24th, 1855, by the Commissioner of the General Land Office to him (Ex. 119, p. 171) as was suggested in that letter, viz: The list based upon the resurveys was recognized as abrogating and superseding the former lists, which former lists were accordingly marked as suspended on the state books.

3d. Exhibit 118, p. 170, is an extract from the report of the Commissioner of the State Land Office for the year 1856, which, after referring to the report last above referred to, says: "Patents are now received for all these lands in the state, except those situate in the Ionia Land District, comprising about 1,200,000 acres, and for these we are assured the patents will soon be forwarded, the making of which have been delayed in consequence of extensive resurveys by the general government, which in some instances changes the amount and character of the land."

Then speaking of the application for the purchase of par-

ticular descriptions, and that no valid sale could be made until after compliance with the law requiring advertisement of a public offering to be published, the report says: "And such public sale or offering has not been deemed advisable until after the title of the state to the grant should be wholly confirmed by the issue of the patents, and the numerous corrections and restatements of the lists necessary to be previously made by the department at Washington."

SEVENTH.

THE DEFENDANT PUT IN THE FOLLOWING EVIDENCE SHOWING THAT THE STATE MADE NO CLAIM TO LANDS CONTAINED
IN THE LISTS BASED UPON THE ORIGINAL SURVEY IN TOWNSHIP 18 NORTH, RANGE 3 WEST, WHICH HAD BEEN SUPERSEDED
BY THE LISTS ABOVE REFERRED TO, BASED UPON THE RESURVEY. SUCH LANDS BEING DISPOSED OF BY THE UNITED STATES
AT PUBLIC AUCTION, AND NO CLAIM OR PROTEST WAS MADE
ON THE PART OF THE STATE.

18t. Exhibit 151, pp. 209 to 211, and Exhibit 151 A, pp. 211, to 213. By these exhibits it appears that Brewer and Burt and others, made entries at the United States Land Office in 1867 for certain lands, amounting to 13,454 acres, in township 18 north, 3 west, 19 north, 3 west, and 20 north, 3 west, which were included in the original list of swamp lands made upon the original survey. By the resurvey in these townships, it appeared that these lands were not swamp, and, therefore, the swamp selections which had been made, including these lands, were set aside upon the filing of the lists upon the resurvey, from which latter lists these lands were omitted. (p. 209.)

The lands were afterwards claimed by the Flint & Pere Marquette Railroad Company as belonging to that company under the railroad grant to the State of Michigan, of June 3rd, 1856. (p. 209.)

It was held by the United States authorities that the effect of the selection of the lands in the original lists in 1852 as swamp lands, was to withdraw them from market, and that they were not afterwards restored to market when the lists based upon the resurveys were substituted in their places, and that their restoration to market required a public notice to be given of their sale. The entry of the lands by Brewer, Burt and others, was cancelled. (p. 211.)

This decision of the Commissioner of the General Land Office was affirmed, and the lands in question were directed to be offered for sale by the Register and Receiver, at Ionia, Michigan, to the highest bidder, at a time and place to be fixed, of which public sale notice was to be given.

See Exhibit 151-A, p. 212.

2d. Testimony of William L. Webber, pp. 239, 240 and 242.

This testimony shows that a public sale of the lands was made by the United States at the U. S. Land Office at Ionia, including lands in township 18-3 west, and 19-3 west.

Mr. Webber attended the sale in behalf of the Flint & Pere Marquette Railroad Company, but there was no notice given in behalf of the state, of any claim to the lands, nor any protest made against the sale on the part of the state, although it was a sale which attracted much attention.

3d. Exhibit 157, p. 221, which is a letter, dated April 5th, 1859, from the Commissioner of the State Land Office to the Governor of the state, in which lists of lands were furnished

to the Governor, showing the difference in the amount of swamp lands, as found by the original surveys, and the resurveys. He says: "The difference in the lands now patented to the state, between the old and new survey, amounts to 235,000 A, and I judge by this communication that the department at Washington do not propose to change that list."

4th. Exhibit 160, p. 226, which is from the report of the Commissioner of the State Land Office of Michigan for the year 1860. This report gives information on the subject of the swamp lands and says 5,857,462.05 acres have been approved to the state, of which 5,049,125.44 acres have been patented, leaving unpatented and unadjusted 808,336.61 acres. This statement has been made from the approved lists and patents, and is believed to be very nearly correct. (Page 236.)

On page 227, the report says: "We gather from the cor respondence on file in this office between the state authorities and the department at Washington that the general government proposes to adopt throughout the resurvey as the basis of patents."

After further showing complications which have arisen in adjusting the grant between the United States and the state, the report says (p. 227): "The peculiar circumstances of the conflictions which have arisen, must be settled, and a basis adopted by personal communication between constituted authorities on the part of the state and United States governments."

March 11th, 1861, the Legislature of the State of Michigan, passed act number 123, Session Laws of 1861, p. 167, authorizing the Commissioner of the State Land Office "to cause lands sufficient to supply the existing deficiency in the quantity accruing to this state, by virtue of the Act of Congress, approved May 20th, 1826, the ordinance of admission,

July 25th, 1836, and any other land grant since made to this state by Act of Congress, to be selected and located in parcels in conformity with the provisions of the several acts making the same."

It will be seen that this statute authorizes the Commissioner to act in reference not only to the swamp land grant, but to all the grants of lands which had been made to the state.

5th. Exhibit 158, p. 222. This is a report of the Committee of Public Lands, of the Legislature of Michigan to the Legislature in the year 1861, upon the subject of the swamp lands granted to the state. The report says, p. 223: "In order to give the house a better understanding of the whole matter, the committee have procured and herewith present a statistical table (marked B) whereby it will be seen that the whole amount granted to the state is 5,840,361 acres, of which the state has received patents for 5,082,375, leaving unpatented \$07,985 acres. Amount disposed of 429,489 acres, showing the amount unsold to be 5,460,871 acres. Included in the amount disposed of, is the amount licensed, 75,422 acres.

By reference to the statistical table herewith annexed, the amount in each county will be easily ascertained."

The statistical table referred to and annexed to this report, p. 224, gives by counties the amount of swamp lands in each county, the amount patented, and the amount unpatented in each county. It states as follows in respect of Clare county, which is the county in which the lands in question are situated, viz:

"Clare—Amount of swamp land in 93.720.56. Amount patented, 59.950.08 Amount not patented, 33.770.48."

6th. Exhibit 159, p. 225, accompanied by statement B, p. 224. This Exhibit 159 is a letter from the Commissioner of the State Land Office, dated July 10th, 1861, to the Commissioner of the General Land Office, inclosing said statement B, as showing the condition of swamp lands in the State of Michigan, in which he says: "The amount selected according to the rule adopted by the Land Office Department, and remaining unpatented, is shown by counties in the third column of the tabular statement, and it is to this particular class of land, denominated in this office unpatented, to which I desire to call the attention of the Commissioner of the General Land Office.

When probably, in the usual routine of your office, may we expect patents for the balance accruing to the State of Michigan?"

It will be observed that this is a recognition on the part of the state of the selections of swamp lands accruing to the state, as the selections had been made and were held to be on the part of the United States, and a request for the balance of the lands so selected, to be patented to the state. It shows the balance to be 807.995.55 acres.

7th. The report of the Commissioner of the State Land Office, for the year 1862 (p. 228) which reports his proceedings under said law of 1861, and says that he had "met a prompt response from the present Commissioner of the General Land Office, and that we have received patents for 362.463.28 acres, and that in the communication heretofore referred to, the Commissioner informs me that 'we have also prepared patent No. 15, containing 93.691.25 acres and patent No. 16, containing 72.585.49 acres, making a total of 533.730.02 acres since last report.' This is in the Ionia and Traverse City land districts.

It is confidently believed that all the questions in relation to our land grants, heretofore unsettled, between the general government and this state, are in progress of a speedy and satisfactory adjustment."

8th. The report of the Commissioner of the State Land Office for the year 1865 (p.228), showing that under the proceedings taken under said act of 1861, his predecessor had forwarded to the Commissioner of the General Land Office, a carefully prepared list of all deficiencies as a basis by which the state could select the balance due. He says this statement was acted upon by the Commissioner, "and transmitted to this office where it was again compared and found to disagree in some material points from the plats and records in this office, and it was again forwarded to the General Land Office for comparison and correction, and has not yet been returned to this office. Hence no selections, on account of the deficiencies, have as yet been made."

9th. Report of the Commissioner of the State Land Office for the year 1866 (p.229) in which he says: "We have received approved lists of about 231,000 acres of the swamp lands which were omitted in former lists on account of the difficulty of m king the selections, by reason of the changes made between to old or fraudulent surveys in some sections of the state, and the resurveys. When patents are received for the lands embraced in such lists, the lands can be speedily brought into market."

Here is a distinct recognition that the resurveys are to govern, and that the adjustment of the land grant between the United States land department and the state, is made upon the basis of the resurveys.

10th. Report of the Commissioner of the State Land Office for the year 1868 (p. 229) in which he says: "The entire amount of swamp lands conveyed to the state by the Act of Congress have been patented, with the exception of about 40,000 acres, lying in Cheboygan and Houghton Counties. And all, excepting about 100,000 acres, have been placed in market."

Land Office for the year 1869 (p. 229). This report says: "The greater portion of the swamp lands have heretofore been placed in market. There is still remaining, however, about 100,000 acres unoffered. A public sale is now pending, to take place on the 6th day of January next, at which time it is expected to place in market the entire body of swamp lands for which the state has recived patents. The AMOUNT REMAINING UNPATENTED IS ABOUT 35,000 ACRES, LYING IN THE COUNTY OF CHEBOYGAN, AND IS EMBRACED IN AN INDIAN RESERVATION, AND CANNOT BE REACHED UNTIL SAID RESERVATION IS EXTINGUISHED."

This shows that all the swamp lands claimed by the state, at the date of this report, had been patented to the state, except the above 35,000 acres in Cheboygan county.

These two reports of 1868 and 1869, are an admission that the state had received all the lands to which it was entitled under the grant, except certain lands lying in Cheboygan county, which lands could not be reached because of an Indian reservation. These reports show also that all the swamp lands belonging to the state, situated in Clare county, as shown by said Exhibit 158, p. 222, 224, had been patented to the state. These reports also show the assent of the state to the identification and patenting of the lands by the Secretary of the Interior on the basis of the resurveys.

12th. The report of the Commissioner of the State Land Office for the year 1870, (p 230) which shows that it was deemed "of great importance that a full and reliable statement of the amount and condition of these lands (swamp lands) should be placed before the Legislature," and that such statement has been prepared "at great labor and with the utmost regard for accuracy."

The report says that it will appear at the close of his report in tabular form, and from which it will be shown that the total amount of swamp land, passed to the state under the act of Congress of 1850, was 5,794. 808.57 acres, that of this amount 3,160,516.21 acres were in the Lower Peninsula and 2,633,792.36 acres were in the Upper Peninsula. To the amount in the Lower Peninsula, as above given, should be added 18,823.93 acres, conveyed by the general government to replace the lands sold and commonly known as "Green Lands."

The report says that much of the complication, in regard to the swamp land grant, arose from sales made by the general government after the passage of the swamp land grant of September 28th, 1850. These lands were designated as "Green Lands."

13th. The report of the Commissioner of the State Land Office for 1874 (p. 230), which states that "Under the Congressional grant of September 28th, 1850, the state has received patents for 5,838,616 acres of swamp land, so called. Large quantities have, however, proved very valuable for lumbering and agricultural purposes. There remains yet to be patented to the state several thousand acres. We have secured the approval of 19,863 acres during the fiscal period, which will be carried into patents during the ensuing year."

It will be observed that these reports for 1870 and 1874 show that there had been patented to the state more swamp

lands than was claimed belonged to the state under the swamp land grant, as shown by the statement prepared, at great labor and with the utmost regard for accuracy, and laid before the Legislature, according to the report of the Commissioner of the Land Office, for the year 1870, p. 230, above referred to.

the

In all this evidence it appears that state assented to the action which had been taken by the United States authorities, based upon the resurveys which had been made in the townships where those authorities had found the original survey to be fraudulent, and had designated the lands accruing to the state under the grant on the basis of the resurveys.

EIGHTH.

THE FOLLOWING EVIDENCE WAS PUT IN BY THE DEFENDANT, SHOWING THE PRACTICE OF THE UNITED STATES AUTHORITIES TO MAKE CORRECTIONS IN APPROVED LISTS OF SWAMP LANDS FORWARDED TO THE STATE, WHENEVER IT WAS FOUND, AFTER SUCH LISTS HAD BEEN FURNISHED, THAT CORRECTIONS OUGHT TO BE MADE FROM EVIDENCES AFTERWARDS COMING TO THE KNOWLEDGE OF THE GENERAL LAND OFFICE.

See

Exhibit 87, p. 129.

- " 88, p. 129.
- 89, p. 131.
- " 98, p. 136,
- " 99, p. 137.
- " 100, p. 137.

Exhibit 102, p. 139.

- 103, p. 140.
- " 104, p. 142.
- " 105, p. 143.
- " 106, p. 145.
- " 107. p. 146.
- " 108, p. 148.
- " 109, p. 148.

NINTH.

The patent under which the lands in question were conveyed by the State of Michigan to Edward W. Sparrow, plaintiff's Ex. 34, p. 54, shows that the lands were obtained under Act No. 30 of the Session Laws of 1883.

This act is found in the Public Acts of 1883, p. 133.

The act appropriates for the purpose of improving the channel of the Cedar River, 10,000 acres of swamp lands in the Lower Peninsula, not otherwise appropriated. It authorized the work to be done by a contractor, who must select the lands to be withheld to be applied upon his contract.

The act does not specify any lands nor provide any other manner for identifying or specifying particular lands than the selection to be made by the contractor.

The evidence of Mr. Sparrow (p. 238) shows that he was a contractor under said act, and that he himself selected the lands which he claims, and that he procured the issue of the patents therefor.

TENTH.

The defendant's evidence shows that the defendant bought the lands under the title derived from the government of the United States, in good faith, and paid a large and valuable consideration therefor, without any knowledge of any adverse claim by the State of Michigan, or any other person, to the lands.

Chas. A. Rust, pp. 240, 241.

The plaintiff's evidence shows that the lands were purchased of the United States, and patents issued therefor in 1870, and were afterwards conveyed to the defendant (pp. 59 to 63. Exhibits 37 to 52 on the above pages.)

All the evidence in the case was returned (p. 286) and a verdict was directed for the defendant by the Court.

(Page 289.)

Assignments of error are made by the plaintiff to the admission of the defendant's evidence, and to the charge of the Court directing a verdict.

If the facts constituting the defence are proper to be considered, we do not understand that it is claimed by the plaintiff that the evidence offered to establish the facts was not proper evidence.

Upon the evidence as given, the facts were not in dispute, and a direction of the verdict was proper if the facts stated a defence.

The questions presented are:

1st. The right of the Secretary of the Interior, before a patent was issued for the lands, to set aside the list of selections of swamp lands made upon the field notes of the original survey, upon the ground that the original survey was found by a resurvey subsequently made, to be fraudulent and false, and in the place of such lists make a list of selections of swamp lands from the field notes of the resurvey, making the resurvey and the lists made thereon supersede and take the place of the original survey and the lists, made therefrom.

2d. The effect of the act of March 3d, 1857, upon the original list of swamp lands, which was based upon the field notes of the original fraudulent survey.

3d. The effect of the acts of the authorities of the state in assenting to and accepting the new lists, made from the field notes of the resurvey and asking for and accepting patents of the lands selected upon the field notes of the resurvey, and in recognizing the acts of the Secretary of the Interior, in making selections from the field notes of the resurvey and placing such selections in the place of the selections which had been made from the field notes of the old survey, and making no protest or objection to the sale by the United States of the lands which were included in the old lists and which were not included in the superseding or new lists.

1.

The right of the Secretary of the Interior to correct the list of lands made upon the original survey, prior to the issue of any patent in pursuance of such list, by making and approving a list to supersede such list, basing his action upon a resurvey which was made because the original survey was fraudulent.

The plaintiff bases its right to recover upon Surveyor-General's List No. 1, Grand River District, Exhibit 26, p. 36, dated March 29th, 1852, and Approved List No. 4, Exhibit 27, p. 37, dated October 27th, 1853, which lists include the lands in question. The defendant claims that these lists were superseded by Surveyor-General's Supplemental List No. 3, Grand River District, Exhibit 124, p. 175, dated May 13th, 1859, and Approved List No. 10, Ionia District, Exhibit 127, p. 178, dated May 15th, 1866, approved May 18th, 1866, which lists exclude the lands in question.

It is submitted that the Secretary of the Interior had the right, before the issue of the patent for the lands contained in the list made from the original survey, to correct and supersede such list by substituting in its place the list based upon the resurvey.

The resurvey was made by the land department, under appropriations made by Congress, for the purpose of correcting the original survey.

First. The identification of the lands which were included in the grant.

The terms of the grant provided: "That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the Governor, and at the request of said Governor, cause a patent to be issued to the state therefor; and on that patent the fee simple to said lands shall vest in said state."

The act further provides: "That in making out a list and plats of the lands aforesaid, all legal subdivisions, the greater part of which is 'wet and unfit for cultivation,' shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom."

9 U. S. Stat., 519, Secs. 2 and 3.

No other guide for the action of the Secretary of the Interior, in making the identification of the lands is furnished, than the above provisions.

Second. The method of identification of the lands being left to the Secretary of the Interior, he could adopt such means of obtaining evidence which would show what lands came within the description of the grant, as seemed to him proper for that purpose.

He adopted the plan stated in the plaintiff's Exhibit 3 A, p. 16, being the letter of instructions of the Commissioner of the General Land Office, of date November 21st, 1850.

1 Lester's Land Laws, p. 543.

This letter requires the Surveyor-General to make out a list of all the lands granted to the state by the Act, and designates two modes of procedure by which the Surveyor-General is to make the selection of the lands, the one of the two modes to be adopted by him to be decided by the election of the authorities of the state in which the lands lie.

The instructions say (p. 18): "The only reliable data in your possession from which these lists can be made out, are the field notes of the surveys on file in your office; and if the authorities of the state are willing to adopt these as a basis of those lists, you will so regard them, if not, and these authorities furnish you satisfactory evidence that any lands are of the character embraced by the grant, you will so report them."

The effect of these instructions was this: If the state authorities elected to adopt the field notes of the surveys in the Surveyor-General's Office, then the United States Land Department, without expense to the state, would make the selections of swamp lands, and there would be nothing for the state authorities to do but to accept such selections when made, and request and receive the patents for the lands selected.

In case the state authorities should not adopt the field notes as a basis of the selections, then the state would be required itself, at its own expense, to furnish satisfactory evidence to the United States Land Department of the lands which it claimed came within the description of the grant.

The advantage to the state in adopting the field notes was the saving to it the expense and labor of furnishing such evidence to the Land Department.

The State of Michigan elected to "adopt the notes of the surveys on file in the Surveyor-General's office."

Session Laws of Mich. of 1851, p. 322.

The language of this Act is: "The people of the State of Michigan enact that they adopt the notes of the surveys on file in the Surveyor-General's office, as the basis upon which they will receive the swamp lands granted to the state by an Act of Congress, of September 28, 1850."

The field notes thus referred to by the United States Land Department and by the State of Michigan are not limited to the field notes at that time on file in the office of the Surveyor-General.

1st. The language employed does not so limit them.

2d. The intention is to make use of the field notes of the survey which is recognized as the official survey, the survey which is acted upon by the United States in the sale and disposition of the public lands.

The original of such surveys are made from time to time by the land department, and resurveys are also made from time to time to correct the frauds and mistakes which occured in the making of the first surveys.

At the time this action was taken by the state, the original surveys had not been completed in the State of Michigan.

See record at page 103, Ex. 77, Surveyor-General's report, dated March 5th, 1851.

The resurveys had been begun in Michigan by the express request of the Legislature of the state, which stated that "it has been satisfactorily made to appear to this Legislature that large districts of lands lying within the limits of the State of Michigan have been returned by some of the Deputy United States surveyors, to the General Land Office, as surveyed, where no surveys whatever have been made, or where the surveys have been so imperfectly done as to be utterly valueless."

It further recited the fact that the "United States Surveyor-General of this land district has caused the lands so

represented as surveyed to be offered for sale to the very great injury to the State of Michigan and the citizens thereof."

This statement of fact was followed by a request to the President of the United States to cause to be surveyed eighty-one described townships.

Exhibit 57. p. 64.

The only course to be taken by the government for such correction, was to send its surveyors to the townships and by examination on the ground ascertain whether the surveys had in fact been made, as they appeared by the returns on file in the Surveyor-General's office.

The inquiry thus instituted, by the express request of the Legislature of the state, disclosed not only that the fraud alleged by the Legislature existed, in reference to the surveys of the particular townships mentioned by the Legislature, but also that such fraud existed in a large number of other townships.

There was the same need for correction in all the townships in which such fraudulent surveys were found to exist in order to protect both the interests of the United States and of the state, from the injuries arising from such fraudulent surveys.

The character of the injuries done by these fraudulent surveys, in addition to the statement contained in the resolution of the Legislature of the state, are expressed in the letter of Senator Woodbridge, September 16th, 1844, to the Commissioner of the General Land Office (Ex. 67, pp. 80, 81, 82), where he says, p. 80, that it was his view "that the surveys in Michigan would be forthwith re-commenced and at least that all these erroneous surveys, which have been made the

subject of so much complaint here, and which were and are leading to such interminable mischief, would have been immediately attended to."

He further says, speaking of the purchase of the public lands (p. 81): "Others who would buy are deterred from purchasing because of the fear that is entertained that whosoever buys there, buys for himself and his assigns forever, interminable law suits instead of a good title, by reason of that outrageous fraud in the surveys."

Further speaking of these false returns of surveys, he says (p. 82): "They are of incalculable extent, and have already produced a deep feeling of wrong done throughout our state."

The Commissioner of the General Land Office, in his report for the year 1851 (Ex. 78, p. 105), speaking of the injury done to the United States, says (p. 106): "The injury to the government, in consequence of the frauds committed in the surveys in this state, consists not only in the pecuniary loss on account of the surveys, but in the false reports of the character of the country, some of the finest portions of which, being represented in the original surveys as indifferent, second and third rate land, and sometimes swamp, have been rendered unsalable for many years."

The resurveys, to remedy these injuries, were begun in 1842, and were being carried on at the time of the adoption of the Act of September 28th, 1850, and were continued thereafter down to 1857 with the assent and acquiescense of the state.

The following appropriations were made by Congress for the purpose of making such resurveys, "to correct erroneous and defective surveys," viz:

In 1845, ten thousand dollars.

5 U. S. Stat., 762.

In 1846, five thousand eight hundred and eighty dollars. 9 U. S. Stat., 95.

In 1849, ten thousand dollars.

9 U. S. Stat., 365.

In 1850, twenty thousand dollars.

By Act of September 30th, which was two days after the adoption of the swamp land grant of September 28th, 1850.

9 U. S. Stat., p. 530.

In 1851, ten thousand five hundred dollars.

9 U. S. Stat., 611, 612.

In 1853, the two sums of five thousand dollars and three thousand dollars.

10 U. S. Stat., 204.

In 1854, twenty thousand one hundred and sixty dollars. 10 U. S. Stat., 565.

In 1855, ten thousand eight hundred dollars.

10 U. S. Stat., 660.

In 1856, nine thousand seven hundred fifty dollars.

11 U. S. Stat., 86.

3d. The field notes referred to by the act of the Legislature of Michigan, were not made for the purpose of identifying the lands under the swamp land grant of September 28th, 1850.

They were incidental to and a part of the official surveys made by the government for the purpose of the sale and disposition of the public lands.

U. S. Stat., p. 466.
 U. S. R. S., Sec. 2395, Sub. D. 7.
 Heath vs. Wallace, 138 U. S., at p. 583.

4th. It was not practicable that there should be two surveys recognized as in force, respecting the lands in the same town, one for the sale and disposition of the public lands, and the other for the purpose of selecting the swamp lands in the town, because the subdivisions and parcels of land by one survey would differ from the subdivisions and parcels of the same section in the other survey.

The lines and boundaries and corners of the two surveys would be different and conflicting.

In order, therefore, to have limited the selections of swamp lands to the field notes then on file in the Surveyor-General's office, it would have required the general government to abandon the resurveys and corrections of the original surveys, and would have required it to treat the public lands as surveyed, even in those cases where no surveys had been made and no lines had been run, as was alleged by the Legislature of the State of Michigan.

It is clear that no such intention existed on the part of the United States or of the state. It is not to be supposed that the state desired to adhere to the field notes on file in order that it might profit by any fraudulent, false or fictitious surveys, and get more lands thereby under this gratuitous grant.

In Dale vs. Turner, 34 Mich., 405, the Supreme Court of Michigan had occasion to deal with questions arising under this swamp land grant, relating to sales which had been made by the United States after the passage of the act, and used the following language expressive of the intent of the state in its dealings with the United States under the grant. (p. 410), viz:

"Seeing that the purpose of Congress was to make a donation, and not a conveyance for consideration, and believing that the act did not of its own force immediately transfer the lands in absolute property to the state, and naturally wishing to act in the same spirit of liberality which had actuated the general government, the Legislature were of the opinion that measures should be taken to protect the rights of intervening purchasers from the United States, and enable the state and the United States to settle in an amicable, fair and practical way, as between themselves, in all cases where the rights of such purchasers might be involved. The very nature of the subject and all the circumstances were adapted to incline the Legislature to act on broad views of right and policy, and to abstain from all extreme pretensions and all attempts to gain technical advantage. In its origin and development, the matter was not one of negotiation and diplomacy, nor one stimulated or directed by national or personal greed. The occasion was not one of higgling between eager and exacting adversaries. It was an affair between governments of the same system, intimately connected by ties of interest and of friendship. The lands were to be a gift."

To impute to the state the intention to adhere to the field notes on file as they existed at the time the grant was made because it would thereby obtain more lands under the grant and would get profit by the fraudulent surveys, is to impute dishonor to the State.

5th. If it was the intention on the part of the state to limit the selections of the swamp lands by the Land Department to the field notes then on file, why did not the state notify the United States authorities, after the grant had been made, to discontinue the surveys which had been commenced at its request, and which would continue under appropriations from year to year made by Congress with the knowledge of the state, or at least notify the department that it would not accept the field notes of the resurveys made after the date of the grant? It not only took no such action, but on the contrary with the knowledge of such appropriations, and of the resurveys, and that the resurveys were made to supersede the original and fraudulent surveys, accepted the selections made upon the field notes of the resurveys, and requested and received and accepted patents for the lands selected upon those field notes.

It is an inevitable conclusion that it was the intention both on the part of the United States and of the state, that the field notes to be used in making the selections were the field notes of the *final*, official survey of the public lands made by the United States, on which surveys the United States would act in making sale of the public lands.

This is the construction by the Secretary of the Interior in reference to the field notes.

State of Mich., 7 Decision Dept. Interior, 514 at 517, 518, 522.

In this case, the Secretary of the Interior, speaking upon this direct subject, says: "Finally, so far as this case is concerned, the obligation of the supposed understanding turns upon the application to be given to the terms employed, the notes of the surveys; for if this phrase means the notes of the corrected and permanent surveys, which was its interpretation from the beginning to the end of the certifications made to Michigan, as already shown by the facts narrated, the force of the claim is turned against the state. The value of contemporary construction is universally acknowledged; and in this case, irrespective of any question of estoppel, the action of the department and its acceptance by the state during so many years, can leave little doubt that the field notes referred to were intended to be those which furnished the best evidence of the fact. The force of this contemporaneous construction is augmented by the fact that at the time when the phrase was first employed, in the adjustment of the grant with the State of Michigan, many resurveys had already been made, some of them at the request of the state itself, and that others were in progress under specific appropriation thereof by Congress; appropriations which were in terms, 'for correction of erroneous and defective surveys, for resurveying and correcting erroneous surveys, and the like.

It cannot be presumed that when corrected surveys already existed, or were in progress, reference by this phrase was intended to those which were, or should prove to be erroneous and defective, instead of those which were correct and reliable. If, therefore, the meaning of the phrase, as applied to surveys already made or in progress, attached to the notes of corrected surveys, instead of the original defective ones, it cannot be doubted that it clearly applied to the notes of such surveys as should be subsequently, by authority of Congress, likewise corrected, and since this obvious conclusion was, in fact, recognized and acted upon by both parties when the resurveys were afterwards made, the meaning of the phrase in the supposed agreement must be accepted accordingly."

This being the case, the identification of the lands was not in any case completed until the final adoption by the United States, of the field notes which became the field notes of its final and official survey, and, therefore, the Secretary of the Interior had the right, down to the time when such final field notes were made, to treat the identification as incomplete, and to correct such lists as had been made upon the old and fraudulent field notes.

Third. The following are decisions of the Secretary of the Interior, holding that lists of lands which have been certified as coming within the grant may, before patent issues, be superseded by the Secretary, on the ground that the evidence upon which they were based was false and fraudulent, and also upon the ground of a mistake.

State of Oregon, 5 Decisions Dept. Interior, p. 31.

State of Oregon, 5 Id., p. 300.

State of Oregon, 5 Id., p. 374.

State of Oregon, 7 Id., p. 572.

State of Minnesota, 6 Id., 637.

State of Wisconsin vs. Wolf, 8 Id., p. 555.

Lachance vs. Minnesota, 4 Decision Dept. Interior, 479, 481.

482.

State of Minnesota vs. Spence, 8 Decision Dept. Interior, 64. State of Florida, 12 Decision Dept. Interior, 565. State of Michigan, 7 Decisions, 514, 515.

In the case of the State of Oregon, 5 Decisions of Dept. Interior, page 31, the process of determining what lands were swamp within the grant, by arrangement between the land department and State of Oregon, was an examination by Commissioners, and upon a report made upon such examination, a list of lands was certified to the state, known as List No. 5. After this list had been so certified, a claim was made to a portion of the lands, asserting that they were not swamp lands, but were lands belonging to the United States which its citizens had a right to enter.

The question presented to the Secretary of the Interior

was whether the list so certified might be impeached for fraud.

Secretary Lamar held that such approval and certification of the list, affirmatively determined the fact that the lands were within the grant and that (pp. 33 and 34) "such judgment cannot be drawn in question, or subject to a different adjudication, by merely showing that the Secretary committed an error in his finding."

"Such approval and certification, however, will not conclude the government if it be shown that it was obtained by fraud or mistake. If, after such approval and certification of the list, it is discovered that lands have been reported as swamp and overflowed, which in fact were not of that character, and that such lands were so reported through the false and fraudulent acts and misrepresentations of either the government agents or others charged with the investigation of the character of such lands, and upon whose decision and report the approval and certification was obtained, such approval and certification may, upon proof of such facts, be reviewed and recalled. Fraud vitiates the most important judicial acts, when found to exist in them, and renders them void upon discovery before the proper tribunal.

So, in like manner, a final decision of the Secretary may be reviewed and revoked, upon the ground of mistake, not mere error of judgment, but that character of mistake which would afford a ground of relief in a Court of Equity.

The Courts have no jurisdiction over public lands until after the issuance of patents. Hence before the issuance of patents, the Department of the Interior is the only tribunal having jurisdiction to review the decision of a former secretary, or to revoke or recall its own decision, when obtained by fraud or mistake." In the case of the State of Oregon, 5 Decision Dept. Interior, page 300, acting Secretary Muldrow, in a communication addressed to the Governor of Oregon, holds that the lists of lands certified to the state as swamp lands coming within the grant, may be superseded and cancelled on the ground of fraud or mistake, by the action of the Secretary of the Interior, referring to the above decision of Secretary Lamar, in the case of Oregon, 5 Id., p. 31.

In State of Oregon, 5 Id., p. 374, after investigation had been made in regard to said List No. 5, certified to the State of Oregon referred to above, Secretary Lamar, in a communication addressed to the Governor of Oregon, requested the state, through its agent, to show cause why said lists should not be revoked and cancelled.

In State of Oregon, 7 Decision, Dept. Interior, 572, the same case came before Secretary Vilas, upon the hearing to show cause why the lists should not be set aside and cancelled. Upon the evidence, he finds that the lists certified to the State of Oregon were based upon acts which were false and fraudulent, in returning the lands as swamp lands by the agent who made the examination.

Secretary Vilas uses the following language (pp. 576, 577): "The government ought not to be and cannot be bound by the act of certification brought about by such means. It must be revoked and cancelled, as would very promptly have been done by the secretary who signed it if the facts had been disclosed to him while in office.

Some question has been raised of my jurisdiction to make this order. This question has been repeatedly considered by my predecessors in office, and but one conclusion was ever reached. In the case of the State of Michigan recently decided, I have expressed to some extent the reasons which seem to me to support the jurisdiction of the department to correct such an

error. To that decision I need add nothing for the purposes of this case. Suffice it to say that unless the certification may be revoked, it would appear necessary to follow it by patent and thus invest the state with possession of a grant which ought immediately to be set aside by a Court of Equity. If such be the law, the state, her grantees, are not without remedy, and my assumption of jurisdiction can be reviewed and corrected by the Courts. It ought to require nothing less than a mandate from the Court of last resort to compel the head of this department, charged with the duty of caring for the interests of the government, and truly identifying the lands it has granted, to become an instrument for so great an outrage upon its grants as the facts here disclosed, show a patent would be. The certification of the List No. 5, of Lake View district, is accordingly revoked and cancelled, and that list entirely set aside. You will prepare another list, in which you will include such lands only as by satisfactory evidence drawn from all reports and information at hand, are unquestionably shown to be swamp or overflowed and unfit for cultivation "

In State of Minnesota, 6 Decision, Dept. Interior, p. 37, application was made on the part of the state for the issue of patents for lands contained in List Nos. 19 and 20, which had been certified to the state as lands coming within the swamp land grant. The issue of patents upon such lists was suspended on the ground that the field notes upon which such lists were based were false and fraudulent. From this action of suspending the issue of patents, the state appealed to the Secretary of the Interior, urging "that said list has been approved by the Secretary and certified to the state as swamp and overflowed lands, and that the consideration of this matter was beyond your jurisdiction."

Acting Secretary Muldrow held, however, that "The Sec-

retary of the Interior has jurisdiction to review the decision of a former Secretary, or to revoke and recall its own decision, when obtained by fraud or mistake, and if the record discloses such facts, the department will take jurisdiction irrespective of the authority or jurisdiction of the Commissioner," and he directed an examination to be made to determine whether the field notes, upon which the list had been based, were false and fraudulent.

In State of Wisconsin vs. Wolf, 8 Decision, Dept. Interior, p. 555, Wisconsin had adopted the field notes as the basis of adjustment of the swamp land grant, and in addition thereto, by agreement made between the Secretary of the Interior and the Governor of Wisconsin, a commission was appointed to make final settlement and adjustment of the swamp lands belonging to the state. Claim.was made upon a homestead entry to a parcel of land which was decided by the commission to be swamp. The state claimed that the action of the commission was final. The Secretary of the Interior (Secretary Noble) decided that the action of the commission was not final, and that investigation into the character of the land may be had.

He says (pp. 556 and 557): "The state is not entitled to lands not granted, nor can the Secretary of the Interior, by agreement enlarge its grant. It is his duty to finally determine what lands passed to the State of Wisconsin as well as to other states under and by virtue of the swamp land act, and though he may adopt certain general methods for identifying these lands, yet the adoption of such methods does not deprive him of the right, or relieve him of the duty of resorting in certain cases to other and different methods, nor is the adoption of any such general method of adjustment, though by agreement between the officers of the respective governments, a contract binding on the general government.

The Secretary of the Interior, notwithstanding such agreement, may at his discretion, any time before swamp lands are certified to the state, adopt such methods, resort to such means and employ such agencies as in his judgment are best calculated to enable him to reach a correct conclusion as to the real character of any particular tract of land claimed under the swamp land act.

The views above expressed result from the nature of the duties devolved by law on the Secretary of the Interior, and are sustained by numerous rulings of the department. Lachance vs. State of Minnesota, 4 L. D., 479; State of Oregon, 5 ld., 31; Hardin Co., Id., 236; State of Michigan, 7 L. D., 514.

Even after selections have been approved and certified to the state as swamp and overflowed lands, which is a stronger case than the one here, the Secretary may in certain cases recall and revoke his approval and on a proper showing refuse patents for lands included in approved lists, and may cause such lists to be cancelled. State of Oregon, supra; State of Minnesota, 6 L. D., 37; State of Oregon, 7 L. D., 572; State of Michigan, supra."

In the State of Michigan, 7 Dec. Dept. Interior, Secretary Vilas, speaking upon this question, says (p. 515): "When, however, the certification made by the Secretary is, before patenting, challenged for fraud or mistake, I think the right and duty remain with him to correct the identification according to the facts, so that the patent shall issue only for lands which were in truth granted by the act of Congress."

Again hs says: "The Secretary retains the power, until a falent issues, to correct his error in the attempt to identify the granted lands by conforming his certification to the truth discovered after it was made. It equally follows that

when the Secretary has, before patent, made discovery of fraud, accident or mistake, in consequence of which he has included in his certification lands not granted by the act of Congress, and has corrected the certification so as to truly and rightly identify the lands actually granted, the only right to a patent existing in the state, or which any Court would enforce, attaches to the land actually granted and correctly identified by the amended certification."

In State of Florida, 12 Decisions, Dept. Interior, 565, a list of swamp lands had been approved by the Secretary of the Interior, which was afterwards revoked by his successor, on the ground that it had been made under a misapprehension of facts. The ruling followed the above decisions and held that until patent issued, the Secretary's jurisdiction over the lands continued for the purpose of their identification.

Fourth. The decisions of this Court sustain the position that the Secretary of the Interior retains the power. until patents issue upon his lists, to make such changes in the lists as shall be necessary to a proper identification of the lands.

He exercises this power in the performance of his duty, "to see that the law is carried out and that none of the public domain is wasted or disposed of to a party not entitled to it."

Rogers Locomotive Machine Works vs. The American Emigrant Co., 17 Sup. C't. Rep., 188.

Knight vs. U. S. Land Association, 142 U. S., 161, 178.

Orchard vs. Alexander, 157 U. S., 372, 382.

New Orleans vs. Paine, 147 U. S., 261, 266.

Heath vs. Wallace, 138 U. S., 582.

Cragin vs. Powell, 128 U. S., 601, 607 to 700.

United States vs. Marshall Mining Co., 120 U. S., 587.

Tubbs vs. Wilhoit, 138 U. S., 134, 143, 144.

Williams vs. United States, 138 U. S., 514 at 524. United States vs. Schurz, 102 U. S., 378, 396, 401.

In Rogers Locomotive Machine Works vs. American Emigrant Co., 17 Sup. Ct. Rep., 188, the controversy was between a claimant, under the swamp land grant, and a claimant under a subsequent railroad grant, the lands having been certified, under the railroad grant, as belonging to the latter grant.

The Court, speaking by Justice Harlan, says: "The Emigrant Company lays much stress upon that clause of the railroad act of 1856, exempting from its operation all lands previously reserved by the United States for any purpose. And upon this foundation, it rests the contention that no lands embraced by the swamp land act of 1850 could, under any circumstances, be withdrawn by the land department from its operation and certified to the state under the railroad act of 1856. This contention assumes that the lands in controversy were, within the meaning of the act of 1850, swamp and overflowed lands. But that fact was to be determined, in the first instances, by the Secretary of the Interior. belonged to him, primarily, to identify all lands that were to go to the state under the act of 1850. When he made such identification then, and not before, the state was entitled to a patent, and on such patent the fee simple title vested in the state. The state's title was, at the outset, an inchoate one and did not become perfect, as of the date of the act, until a patent was issued."

In Knight vs. United States Land Association, 142 U. S., 161, an ejectment was brought, and the question of title was whether the land belonged to the State of California, under which the plaintiff claimed, or to the city of San Francisco, under which the defendant claimed.

The decision of the case turned upon the question whether a certificate, which had been made and confirmed by the Commissioner of the General Land Office, was of force, or whether it was superseded by a subsequent certificate, made under the order of the Secretary of the Interior.

The case involved a decision upon the power of the Secretary of the Interior, and the Court say (p. 176): "It is a well settled rule of law that the power to make and correct surveys of the public lands belongs exclusively to the political department of the government, and that the action of that department, within the scope of its authority, is unassailable in the Courts, except by a direct proceeding. Cragin vs. Powell, 128 U. S., 691, 699, and cases cited. Under this rule it must be held that the action of the land department, in determining that the Von Leicht survey correctly delineated the boundaries of the Pueblo grant, as established by the confirmatory decree, is binding in this Court, if the department had jurisdiction and power to order that survey."

The Court say (p. 178): "The statutes, in placing the whole business of the department under the supervision of the Secretary, invest him with authority to review, reverse, amend, annul or affirm all proceedings in the department, having for their ultimate object to secure the alienation of any portion of the public lands, or the adjustment of private claims to lands, with a just regard to the rights of the public and of private parties. Such supervision may be exercised by direct orders or by review on appeals. The mode in which the supervision shall be exercised in the absence of statutory direction, may be prescribed by such rules and regulations as the Secretary may adopt. When proceedings affecting titles to lands are before the department, the power of supervision may be exercised by the Secretary, whether these proceedings are called to his attention by formal notice

or by appeal. It is sufficient that they are brought to his notice. The rules prescribed are designed to facilitate the department in the despatch of business, not to defeat the supervision of the Secretary. For example, if, when a patent is about to issue, the Secretary should discover a fatal defect in the proceedings, or that by reason of some newly ascertained fact the patent, if issued, would have to be annulled, and that it would be his duty to ask the Attorney-General to institute proceedings for its annulment, it would hardly be seriously contended that the Secretary might not interfere and prevent the execution of the patent. He could not be obliged to sit quietly and allow a proceeding to be consummated, which it would be immediately his duty to ask the Attorney-General to take measures to annul."

On page 181, the Court quotes this language from the case of Williams vs. United States, 138 U. S., 514, viz: "It is obvious, it is common knowledge, that in the administration of such large and varied interests as are intrusted to the land department, matters not forseen, equities not anticipated, and which are, therefore, not provided for by express statute, may sometimes arise, and, therefore, that the Secretary of the Interior is given that superintending and supervising power which will enable him, in the face of these unexpected contingencies, to do justice." And the Court continues: "The Secretary is the guardian of the people of the United States over the public lands. The obligations of his oath of office oblige him to see that the law is carried out, and that none of the public domain is wasted or is disposed of to a party not entitled to it. He represents the government, which is a party in interest in every case involving the surveying and disposal of the public lands."

This statement of the power of the Secretary of the Interior, is repeated and affirmed in Orchard vs. Alexander, 157 U. S., at pages 381, 382.

This case distinguishes the ruling in Butterworth vs. Hoe, 112 U. S., 150, which was a case arising under the laws relating to the Commissioner of Patents.

In New Orleans vs. Paine, 147 U. S., 261, the controversy was over the right of the land department to correct, by subsequent survey, a survey which had been previously made under the direction of the department. The Court say, speaking by Justice Brown (p. 266): "It is quite evident from this correspondence that the first survey was never formally approved by the Secretary of the Interior, or the Commissioner of the Land Office, and that no title ever vested in the plaintiff to the lands included in the survey, though defendant, having obeyed his instructions, was, of course, entitled to his pay. If the department was not satisfied with this survey, there was no rule of law standing in the way of its ordering another. Until the matter is closed by final action, the proceedings of an officer of a department are as much open to review or reversal by himself, or his successor, as are the interlocutory decrees of a Court open to review upon the final hearing."

In Heath vs. Wallace, 138 U. S., p. 573, the question involved was whether lands returned as "subject to periodical overflow," are swamp and overflowed lands, within the swamp land grant of September 28th, 1850. The case required a construction of said act. The Court made reference to the constructions, which had been put upon the act by the officers of the government who acted under it, and

say (p. 582): "Moreover, if the question be considered in a somewhat different light, viz: as the contemporaneous construction of a statute by those officers of the government whose duty it is to administer it, then the case would seem to be brought within the rule announced at a very early day in this Court, and reiterated in a very large number of cases, that the construction given to a statute by those charged with the execution of it, is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons. For, as said in *United States vs. Moore*, 95 U. S., 760, 763, 'the officers concerned are usually able men and masters of the subject. Not unfrequently they are the draftsmen of the laws they are afterwards called upon to interpret.'"

In Tubbs vs. Wilhoit, 138 U. S., at page 143, the Court say: "There can be no doubt but that under the act of July 4.1836, re-organizing the General Land Office, the Commissioner has general supervision over all surveys, and that authority is exercised whenever error or fraud is alleged on the part of the Surveyor-General."

Fifth. We submit that it is the obvious intent of the provisions of the act, that until patent issues, the jurisdiction of the Secretary of the Interior remains to do such acts as he may deem necessary for the proper identification of the lands to protect the public interest.

While the first section of the act provides that "the whole of the swamp and overflowed lands, made unfit thereby for cultivation, shall be and the same are hereby granted to said state," the identification of the lands, by the Secretary of the Interior, by making lists and plats, is provided for, and there

is no limitation upon the time for his action, or upon his jurisdiction over the subject of identification of the lands, other than the provision that he shall cause a patent to issue, "and on that patent the fee simple to said lands shall vest in said state."

The intent of the statute is:

1st. That all the lands granted shall be identified by the Secretary of the Interior, and that he shall, after identification, cause patents to issue for them.

2d. That the title to the particular lands granted shall remain subject to the Secretary's jurisdiction and action of identification, until their identification becomes fixed and made final by the patent which he shall cause to issue.

This is the obvious effect of the provision, that on that patent the fee simple to said lands shall vest in the said state.

Clearly, until the patent issues, the title under the terms of the statute is in a condition of suspense, or in the language of the Courts, it is "afloat." The manifest purpose of such suspense is to enable the Secretary to make and complete his identification. There does not seem to be any other purpose which can be attributed to the provision, that "on that patent the fee simple to said lands shall vest in said state," than to fix the period when the jurisdiction of the Secretary of the Interior, for the identification of the land, shall terminate, and that until that time he shall have authority to do such acts as are necessary for the proper identification of the lands.

When the patent issues the title is held to relate back and to have effect as of the date of the act, and by such relation the title is held to have passed *in presenti* under the provisions of the first section of the act.

This construction of the act entitles the Secretary of the Interior to protect the public interest, correct frauds and mistakes in surveys, or which may occur in the land department, and "to see that the law is carried out, and that none of the public domain is wasted, or is not disposed of to a party not entitled to it."

This construction is not opposed to the cases which hold the title to have passed without the issue of a patent, or without any list approved by the Secretary of the Interior.

> Railroad Co. vs. Smith, 9 Wall., 95. Wright vs. Roseberry, 121 U. S., 488, 509. Tubbs vs. Wilhoit, 138 U. S., 134, 137.

In those cases, the question was whether there may be identification of the lands, without certain acts of the Secretary of the Interior, when the Secretary fails to act under the statute as the statute contemplates he shall act. The question here is whether the Secretary has jurisdiction to act, in performing his duties prescribed by the act, until he, in the performance of such duties, causes the patents to issue.

The case of Noble vs. Union River Logging Railroad Co., 147 U. S., 165, is not in conflict with the defendant's contention. The case did not arise under the swamp land grant, nor come within the jurisdiction of the Secretary of the Interior in any respect relating to the surveys of the public lands. It arose under the act of March 3d, 1875, 18 U. S. Statutes, page 482, which provides that the right of way through the public lands of the United States is granted to any railroad company duly organized under the laws of any state or territory, except the District of Columbia, which shall file with the Secretary of the Interior a copy of its articles of incorporation, and due proof of its organization under the same, to the extent of one hundred feet on each side of the central line of said road.

It further provides that any railroad company desiring to secure the benefits of this act, shall within twelve months after the location of any section of twenty miles of its road, if the same be upon surveyed lands, and if upon unsurveyed lands, within twelve months after the survey thereof by the United States, file with the register of the land office, for the district where such land is located, a profile of its road, and upon approval thereof by the Secretary of the Interior, the same shall be noted upon the plats in said office, and thereafter all such lands over which said right of way shall pass, shall be disposed of subject to such right of way.

The Union R. R. Logging Co., in January, 1889, desiring to avail itself of said act, filed with the register of the land office, at Seattle, a copy of its articles of incorporation, a copy of the territorial law under which the company was organized, and the other documents required by the act, which papers were transmitted to the Commissioner of the Land Office, and by him sent to the Secretary of the Interior, by whom they were approved in writing and ordered to be filed, and were filed at once and the company notified thereof.

In the spring of 1889 following, the company proceeded to extend its line of road, made and ballasted a new roadbed of standard guage, and substituted steel rails and another locomotive in place of the rails and equipments which had been used by it for logging purposes, thus acting in the construction and equipment of its road upon the action which had been taken by the Secretary of the Interior.

In 1890, the succeeding Secretary of the Interior made an order which was served upon the company, requiring it to show cause why said approval should not be revoked and annulled. A bill was filed by the company to enjoin the Secretary of the Interior and the Commissioner of the Land Office from revoking the approval which had been made by the former Secretary.

The Court held that the Secretary who made the approval had jurisdiction to determine whether the railroad company had complied with the conditions of the Act of Congress, by which the right of way was granted, and that when he made his decision, the title to the right of way passed to the railroad company, and that the Secretary of the Interior had no further jurisdiction over the case.

The case is likened to the transfer of title by a patent of the United States. After referring to the decisions upon that subject, viz: In relation to patents for lands, and that patents can only be annulled by proceedings taken for that purpose, the Court say, at page 176: "We think the case under consideration falls within this latter class. The lands over which the right of way was granted were public lands, subject to the operation of the statute, and the question whether the plaintiff was entitled to the benefit of the grant was one which it was competent for the Secretary of the Interior to decide, and when decided, and his approval was noted upon the plats, the first section of the act vested the right of way in the railroad company. The language of that section is 'that the right of way, through the public lands of the United States, is hereby granted to any railroad company, duly organized under the laws of any state or ferritory, etc.' The uniform rule of this Court has been that such an act was a grant in presenti of lands to be thereafter identified. Railway Company vs. Alling, 99 U. S., 463. The railroad company became at once vested with a right of property in these lands, of which they can only be deprived by a proceeding taken directly for that purpose. If it were made to appear that the right of way had been obtained by fraud, a bill would doubtless lie by the United States for the cancellation and annulment of an approval thus obtained. Moffat vs. United States, 112 U. S., 24; United States vs. Minor, 114 U. S., 233. A revocation of the approval of the Secretary of the Interior, however, by his successor in office, was an attempt to deprive the plaintiff of its property, without the due process of law, and was, therefore, void."

It will be seen that the swamp land grant is not referred to. There is no provision in the act for the issue of a patent. There is no question of a proper survey of or identification of the lands involved. The only act of the Secretary of the Interior, which the statute authorizes, is the examination and approval of the profile of the railroad. By such approval the right of way vests.

The case of Noble vs. Union River Logging RailroadCo., is referred to and explained in the case of New Orleans vs. Paine, 147 U. S., at page 264.

II.

The effect of the act of March 3d, 1857.

The right of the Secretary of the Interior to correct the lists, under which the plaintiff claims, and to supersede them upon the ground of fraud or mistake, continued after the adoption of said act.

The lists in question, under which the plaintiff claims, had been acted upon by the Secretary of the Interior, and had been approved and certified to the state before the adoption of the statute. His action, after the adoption of the statute, was his correction of those lists.

The act provides that the selection of swamp and overflowed lands granted to the several states by the act in question, of September 28th, 1850, and by an act to aid the State of Louisiana in draining swamp lands therein "heretofore made and reported to the Commissioner of the General Land Office, so far as the same shall remain vacant and unappropriated, and not interferred with by an actual settlement under any existing law of the United States, be and the same are hereby confirmed and shall be approved and patented to the several states in conformity with the provisions of the act aforesaid as soon as may be practicable after the passage of this law."

11 U. S. Stat., p. 251.

1st. The terms used in the act show that it was intended to apply to lists, which at the time of the passage of the act had been made and reported to the Commissioner of the Land Office for action, but which had not been acted upon by the Secretary of the Interior.

It was because they had not been acted upon, and were there in the office awaiting action for approval by him that the statute is adopted, so that the delay in respect to them shall be terminated.

The statute confirms them and directs "that they shall be approved and patented to the several states in conformity with the provisions of the act aforesaid." That is, in conformity with the provisions of the act of September 28th, 1850, the Secretary shall approve the list. He is to proceed under that act.

Clearly, the act has no application to a list which the Secretary, before the passage of the statute, had acted upon, approved and certified to the state, which is the case with the lists in question, under which the plaintiff claims.

In such case, he had gone forward in the performance of

his duty, and had made an approved list and there was no occasion for the application of any such statute. It was to remedy the *failure of the Secretary to act* that the statute was adopted.

Although the list which had been approved by the Secretary of the Interior was based upon evidence of the field notes of the fraudulent survey, it was not the intention of the act to confirm that approved list, and thus take from the Secretary of the Interior the power which he possessed to correct the list because of fraud. Certainly it was a list not acted upon and not approved which was in the eye of the statute.

Again, it was not the purpose of the statute to confirm lists which had been reported to the Secretary of the Interior and which had been acted on by him, and rejected by him because the lists presented to him were incorrect, for fraud or mistake, or for any other cause.

2d. The construction put upon this act by the land department is that it does not apply to and does not confirm lists which had been acted upon by the Secretary of the Interior and rejected by him.

> State of Arkansas, 8 Decision Dept. Interior, 387. State of Michigan, 7 Id., 514 at 525.

See letter of Thomas A. Hendricks, Commissioner of the General Land Office, Ex. 23, record pp. 31 to 33.

Letter of Secretary of the Interior, Thompson, to the Commissioner of the General Land Office, dated Nov. 1st, 1858.

Lester's Land Laws, p. 563.

In State of Arkansas, 8 Decision Dept. Interior, 387, the question came before Secretary Noble whether the Act of March 3d, 1857, applied to and confirmed a list of lands selected on the part of the State of Arkansas and reported to the General Land Office as swamp land, which list bore date August 27th, 1853, and which was received at the office of the Commissioner of the General Land Office, between that date and the 13th of September, 1853, on which latter date it was returned to the Surveyor-General on the ground that the survey was defective, with the statement that until properly certified, it could not be acted upon.

The Secretary says: "It in no way appears that between that time and the date of the passage of the confirming act (March 3d, 1857) anything was done to reinstate this list as one pending in the department for approval."

The Secretary holds that the act of March 3d, 1857, does not apply to such list. He uses this language, on page 388: "In the Michigan swamp land adjustment, (7 L. D., 525), my predecessor, Secretary Vilas, held that the act of 1857 did not operate to confirm lists of lands, which had been filed in your office before the 3rd of March, 1857, but to replace which, certain revised or amended lists had before that date been made out and filed. The principle of this decision is that selections pending as such, as at that date of the passage of the act, and not also all lists before that time finally disposed of, were intended to be confirmed."

In the decision of Secretary Thompson, above referred to, (1 Lester's Land Laws, p. 563) the question was presented whether a list filed in the General Land Office, prior to March 3d, 1857, was confirmed by said act, and the Secretary holds that it was, "excepting so far as by the action of the Surveyor-General or of your office, taken prior to said date, particular tracts on said lists had been noted as dry, not

swampy, or not granted by the act of 1850. Notes on any list having such purport, and reports from the Surveyor-General or decision of your office, rejecting in terms the work of a particular agent as improperly, incorrectly or unreliably done, I regard as specific determination, adverse to the claim of the state to the particular tracts thereby affected. By which determinations the lists in your office have been purged and reduced in a corresponding degree."

This construction, of the act of March 3d, 1857, was adopted and applied in the case of the state of Michigan vs. Jackson, Lansing & Saginaw Railroad Co., 16 C. C. A., 345, 348, 349. No appeal was taken from this decision, and it stands as final against the state.

In the opinion, the Court referred to the views expressed upon this subject in this case of the Michigan Land & Lumber Co. vs. Rust, in which the Court say (15 C. C. A., p. 349): That the Court is "of the opinion that the act was not intended to include a list which was in the situation of the one under which the plaintiff claims. The list had some time before been acted upon by the land department, and was expected to stand, except in so far as it should be impeached for fraud or error by the resurveys. Congress knew that those resurveys were going on. For several years it had been making appropriations therefor. It was a matter of public record that the surveys, on which it was based were fraudulent, and that where the resurveys had developed the fraud and corrected the errors, all traces of the old survey were obliterated. The old survey had been rejected by competent authority. As was said in Knight vs. Association, supra, a rejected survey is no survey, and inoperative for any purpose. New lists had been made and filed in the Commissioner's office, based upon the new survey, and the plats made in conformity therewith. It was held by the Secretaries of the Interior, and we think with sufficient reason, that the act was not intended to confirm old lists, founded upon the first survey which had been thus superseded. It was so held by Secretary Vilas in State of Michigan, 7 Land Dec. Dept. Int., 525; by Secretary Noble in State of Arkansas, 8 Land Dec. Dep. Int., 387; and this is confirmed by the ruling of Secretary Thompson, in 1 Lester's Land Laws, 560. And further, we are of the opinion that it was not intended by this act to override the general power of the Secretary to correct frauds and mistakes in the preparation of the lists thereby confirmed, and that upon a just construction of the act such frauds and mistakes remained subject to correction."

In Knight vs. U. S. Land Association, 146 U. S., at page 199, it is held that "a rejected survey, by officers of the land department, is in law no survey, and inoperative for any purpose. It has so been held in numerous instances and never to the contrary."

The case of Tubbs vs. Wilhoit, 138 U. S., 134, arose in relation to the act of July 3d, 1866, 14 U. S. Stat., 219, which was an act confirming selections of swamp land made under the swamp land grant of September 28th, 1850, made in the State of California, and the right of the Land Department to correct lists and plats for fraud or error, was recognized in that case by the Supreme Court. (See p. 143.)

The principle of these decisions is that the act of March 3d. 1857, applied only to lists of lands on file in the office of the Commissioner of the General Land Office, which were awaiting the action of approval by the Secretary of the Interior, that if they had been acted upon and rejected, the

act did not apply to them, and it would clearly follow that if they had been acted upon and approved, as in the case of the list in question, the act did not apply to them.

3d. This statute came to be adopted because of the cases where the states themselves, instead of adopting the field notes of the United States survey, on file in the Surveyor-General's office, as a basis of selecting the lands, so that the work of selection should be made by the Secretary of the Interior, made their own selections and forwarded their lists upon such selections to the Commissioner of the General Land Office, which lists remained in the office of the Commissioner of the General Land Office without being acted upon by the Secretary of the Interior.

The states which adopted the notes of survey in the Surveyor-General's office as the basis for the action of the Secretary of the Interior, were Michigan, Wisconsin and Minnesota. The other states did not adopt the notes of survey as a basis for determining the lands which came within the grant, but took proceedings through their own officers and agents, under statutory provisions adopted by themselves, and furnished to the Commissioner of the General Land Office proofs of the character of the lands, upon which proofs the Secretary of the Interior was to make his approved lists.

t Lester's Land Laws, p. 542. Lachance vs. Minnesota, 4 Dec. Dept. Interior, 479.

The proofs presented by the states were furnished to the Commissioner of the General Land Office.

The Secretary of the Interior did not act upon these proofs, or so greatly delayed his action upon them that the states failed to obtain approved lists of lands coming within the grant from the Secretary of the Interior. It was to remedy this condition in relation to approving lands to those states that the act of March 3d, 1857, was passed.

This construction has been put upon the act by the Su-

preme Court, and by the Land Department.

Tubbs vs. Wilhoit, 138 U. S., 134 at 137, 138. Martin vs. Marks, 97 U. S., 345 at 347, 348. I Lester's Land Laws, p. 558.

III.

The State of Michigan, by its conduct, was estopped to claim title to the lands under the lists upon which the plaintiff's claim is based, and the plaintiff, as the grantee of the state, is also estopped. His rights are no other than such rights as the state had at the time the state patented the lands to him.

The evidence is undisputed that the resurveys were made by the land department for the purpose of correcting the frauds in the original surveys, and that they were instituted upon the representation of the state "that large districts of lands, lying within the limits of the State of Michigan, have been returned by some of the deputy United States surveyors to the General Land Office as surveyed, where no surveys whatever have been made, or where surveys have been so imperfectly done as to be utterly valueless."

Exhibit 57. pp. 64, 65.

These surveys were carried on under appropriations made by Congress from time to time, from 1845 to 1856, with the knowledge of the state. See the appropriations before cited, p.70, snpra.

An appropriation of twenty thousand dollars for such purpose, was made on September 30th, 1850, two days after the passage of the swamp land grant in question.

9 U. S. Stat., p. 530.

The result of the examinations and resurveys is stated by the Surveyor-General to be that:

(P. 115.) "In some instances, in the original survey, lakes, covering many hundreds of acres, have been laid down upon the maps where none existed, thus covering with water a large area of beautiful country which, but for these frauds might long since have been opened for sale and settlement."

(P. 117). "In the townships resurveyed and corrected, portions of the lines were run and found to be established, other lines were run, but seemed never to have been corrected, while other portions of the survey were found to be entirely fraudulent, no lines ever having been run."

(P. 118.) "The examinations in the four districts, embraced in my present estimate, represent that in many of the townships no lines have ever been run. They also serve to show, as all examinations of defective survey in this state have ever done, that the field notes of the original surveys are no index to the true and real character and value of the country of which they purport to give a faithful description."

Speaking of the district in which the township in question (18-3) is situated, the Surveyor-General says (pp. 88, 89): "I beg leave to say that from examinations that have been made by William A. Burt within the last three months, it appears that most of the field notes, originally returned to this office by H. Nicholson, N. Brookfield and J. Brink, as containing a true description of surevys made by them under their respective contracts, dated 20th July, 1838, 30th November, 1839, and 13th of December, 1839, are fictitious and

fraudulent. * * * The districts above referred to are all bounded on the east by the principal meridian, and lie between townships No. 17 and 24 north, in the State of Michigan."

H. Nicholson was the deputy surveyor who surveyed the

township in question.

See plaintiff's Ex. 30, pp. 40, 47.

The Surveyor-General further says (p. 89): "I have returns from Mr. Burt up to the 3d of last month, and the surveys of every district and of almost every township examined by him, previous to that date, proved to be fraudulent."

After referring, on pp. 89 and 90, to field notes received from Mr. Burt, describing examinations made by him in districts which were surveyed by Henry Nicholson, who surveyed the township in question, the Surveyor-General says (p. 90): "The returns of surveys in seven districts, embracing ninety-one townships, are grossly fraudulent—the greater portion of the field notes thereof being wholly fictitious, or descriptive of lines and corners that were never established."

On Exhibit N, annexed to the Surveyor-General's report for 1849, at page 95, the township in question (18-3) is mentioned in the district surveyed by Henry Nicholson, and opposite the township appears this statement:

"This district was contracted for by Mr. Nicholson in 1838, the next year after he had made his returns of the one described above, and his work in it is found to be no better, but rather worse than it was in that. Examinations were made in every township, and there can be no doubt that it is bad throughout."

The Commissioner of the General Land Office says (p. 106): "The injury to the government, in consequence of the frauds committed in the surveys in this state, consists not only in the pecuniary loss on account of the surveys, but in the false reports of the character of the country, some of the finest portions of which being represented in the original surveys as indifferent, second and third rate land, and sometimes swamp, have been rendered unsalable for many years."

The practice of the land department from the beginning, was that upon making resurveys, the original surveys were cancelled and were not made use of for any purpose.

Exhibit 69, p. 83, which is a letter dated October 1st, 1884, from the Commissioner of the General Land Office to the Register and Receiver at Genesee, Michigan.

Exhibit 79, p. 107.

- " 80, p. 112.
- " 81, pp. 113 to 126.
- " 86, p. 128.
- " 92, p. 133.
- " 93. p. 134.
- " 94, p. 134.
- 95, p. 135
- " 96, p. 135
- " 144, p. 202
- " 145. p. 203.
- " 146, p. 204.
- " 147. p. 205
- " 148, p. 206.

In Knight vs. U. S. Land Association, 142 U. S., at 199, before cited, the practice of the land department is declared to be "the principle that a rejected survey, of officers of the

land department, is in law no survey, and inoperative for any purpose. It has so been held in numerous instances and never to the contrary."

Where new lists were made from the resurveys before patents had been issued for lands upon the old lists, the new lists abrogated and stood in the place of the old lists.

Exhibit 79, p. 107 to 110.

- " 80, p. 112.
- " 81, p. 113.
- " 91, p. 133.
- " 83. p. 126.
- " 92, p. 133.
- " 86, p. 128.
- " 93. p. 134.
- " 94, p. 134.
- " 95. p. 135.
- " 96, p. 135.

The list of lands based upon the old survey and another list of lands based upon the resurvey, were in no instance recognized as being in force. Only one list in a town, either the list made on the original survey, or the list made on the resurvey was ever recognized.

Exhibit 23, p. 31.

- " 121, p. 173.
- " 122, p. 174.
- " 143, at p. 201.
- " 149, p. 207.

This practice of the land department was known to the state authorities and was recognized by them.

Exhibit 119.p. 171.

- " 120, p. 172.
- " 118, p. 170.

In pursuance of this practice, the land department had a resurvey made in town 18 north, range 3 west, the town in question, and on that resurvey made a new Surveyor-General's list, and a new list approved by the Secretary of the Interior, which lists, by their terms, superseded and stood in the place of the lists under which the plaintiff claims.

The lists under which the plaintiff claims, included lands in township 18 north, range 3 west, the town in question. This town was erased from such lists after the new Surveyor-General's lists, made upon the resurvey, was filed.

Upon the old list, thus corrected and superseded as to town 18 north, range 3 west, the Governor of the state requested a patent to issue to the state, and a patent was accordingly issued, which omitted township 18 north, range 3 west. The approved list, made upon the resurvey, was approved after the above patent had been issued, and included lands in town 18 north, range 3 west, but did not include the lands in question. The Governor of the state requested a patent of the lands, based uponthis approved list, and a patent was issued to the state accordingly.

In this manner it is shown that the state recognized this new approved list and the selections of lands that had been made according to it, assented to it, and requested and received a patent based thereon.

Exhibit 110, p. 149.

- " 111, p. 153.
- 112, p. 157.
- " 113. p. 157.
- " 161, p. 231.
- " 162, p. 234.
- " 124, p. 175.
- " 125, p. 177.
- " 126, p. 178.
- " 127, p. 178.

Exhibit 128, p. 180.

- " 129, p. 180.
- " 130, p. 181.

See also,

Exhibit 136, pp. 189, 190.

- " 137. p. 193.
- " 138, p. 196.
- " 139, p. 197.
- " 140, p. 198.
- " 141, p. 199.
- " 142, p. 200.

The state authorities, including the Governor, Commissioner of the State Land Office and Legislature, in adjusting the land grant with the United States, acted upon the resurveys, and the lists made upon the resurveys, which superseded the lists made upon the original surveys and the patents issued thereon, and upon that basis obtained patents to all the lands to which the state was entitled under the grant, upon the basis of the resurveys.

See.

Exhibit 157, p. 221.

- " 160, p. 226.
- 159, p. 225.

Report of the Commissioner of the State Land Office for the year 1862, p. 228.

ld. for year 1865, p. 223.

ld. for year 1866, p. 229.

Id. for year 1868, p. 229.

Id. for year 1869, p. 229.

ld. for year 1870 p. 230.

Id. for year 1874, p. 230.

It further appears by the evidence that the United States proceeded to dispose of the lands in township 18 north, range 3 west, not included in the lists made upon the resurvey of that town, and that no objection was made on the part of the state to such action of the United States.

Ex. 151, pp. 209, 211.

Ex. 151, A. p. 211.

Wm. L. Webber, pp. 239, 240, 242.

It appears distinctly from the evidence that the lands which were contained in the original lists and which were omitted from the superseding lists, were omitted because upon a resurvey they were found not to be swamp. The lands which were contained in the superseding list and were omitted from the first list, were lands which upon the original survey were not found to be swamp, and upon the resurvey they were found to be swamp. Thus, where the two lists differed, they differed because the lands constituting the difference were found to be swamp in one case and were found not to be swamp in the other case. Both lists could not be right. The state was not entitled to take under both lists. It was not intended by the Secretary of the Interior, nor understood on the part of the state, that the two lists should stand and be in force in the same town.

It is clear from the entire evidence that while the transaction was going on, it was not designed, either by the United States or by the state, that the state should take under both lists.

The state was, therefore, called upon to make its election as to which list it would request and receive patents upon.

The state did make its election, and requested and re-

ceived patents upon the second list for the lands in township 18 north, range 3 west, in 1857.

Ex. 113. p. 157.

The state never afterwards applied to the Secretary of the Interior for a patent for the lands in controversy, nor made claim to them, other than by conveying them to Edward Sparrow, on October 14th, 1887, thirty years after. See Exhibit 33, p. 53, and Exhibit 34, p. 54.

The consequence of making such election was to put the United States in a position so that it might sell the lands not included in the second list, which was accepted by the state. This election also put the public in a position to be assured that it might deal with the United States in reference to such lands. The United States and the public acted accordingly. Sales were made of such lands to the citizens of the State of Michigan, who bought in good faith, supposing that they had obtained the title to the lands from the United States, free from any hostile claim from any quarter, and received a patent of the United States therefor. The defendant obtained his title to the lands in question in that manner, making his purchase in good faith, under patents from the United States.

C. A. Rust, p. 240.

Oscar Palmer, p. 50.

Patents and conveyances, pp. 59 to 64.

Under such circumstances, the state and the plaintiff, as its grantee claiming under the state, is estopped from claiming the title to the lands as swamp lands.

> State of Mich. vs. F. & P. M. R. R. Co., 89 Mich., 481. State of Mich. vs. Jackson, Lansing & Saginaw R. Co., 16 C. C. A., 345 at 349 to 352.

Dickinson vs. Colgrove, 100 U. S., 578 at 580.

Kirk vs. Hamilton, 102 U. S., at 76 to 79.

Pingra vs. Munz, 29 Fed. R., 830 at 836.

Hough vs. Buchanan, 27 Fed. R., 328 at 331.

U. S. vs. R. R. Co., 37 Fed. R., 68 at 71.

Audubon Co. vs. Am. Emigrant Co., 40 Iowa, 460 at 466.

Adams vs. R. R. Co., 39 Iowa, 507 at 511, 512.

State vs. Dent, 18 Mo., 313.

R. R. Co. vs. Lyndell, 39 Mo., 329.

State vs. Galveston, 38 Texas, 12.

State of Indiana vs. Milk, 11 Fed R., 389 at 396, 397.

U. S. vs. Military Road Co., 41 Fed. R., 493.

U. S. vs. McLaughlin, 30 Fed. R., 147.

2 Herman on Estoppel, Sec. 677, 678.

U. S. vs. Willamette, &c., Co., 54 Fed. R., 807 at 811.

Cohn vs. Barnes, 5 Fed. R., 326 at 333, 334.

In the case of the State of Michigan vs. The Flint & Pere Marquette R. Co., 89 Mich., 481, the state claimed lands as belonging to it, by virtue of this swamp land grant, under lists made upon the original surveys. The defendant claimed the lands under certification of the lands by the land department, as falling under the railroad grant of June 3, 1856. The Court held the state to be estopped to set up title to the lands, upon a state of facts similar to the facts presented by this record.

In the case of State of Michigan vs. The Jackson, Lansing & Saginaw R. Co., 16 C. C. A., 345, the Court of Appeals applied the law of estoppel, as recognized by the Supreme Court of Michigan, to the same state of facts which is presented by this record.

The other authorities above cited fully sustain the principle of those decisions.

The defense of estoppel applies to this action of ejectment,

Dickinson vs. Colgrove, 100 U. S., 578, 580, 584. Kirk vs. Hamilton, 102 U. S., 68 at 78. Dean vs. Crall, 98 Mich., 591. Barnard vs. Germ. Am. Sem., 49 Mich., 444.

The defense of estoppel is not required to be pleaded as a defense in this case.

Howell's Statutes of Mich., Secs. 7808, 7809.
 Dean vs. Crall, 98 Mich., 591.
 Roberts vs. Lewis, 144 U. S., 653, 656, 657.

2 Howell's Statutes, Sec. 7808, which relates to the action of ejectment, provides as follows: "The defendant may demur to the declaration as in personal actions, or he shall plead the general issue only, which shall be the same as in personal actions, and the filing and service of such plea or demurrer shall be deemed an appearance in the cause, and upon such plea the defendant may give the matter in evidence, and the same proceedings shall be had as upon the plea of not guilty in the present action of ejectment."

Sec. 7809 provides that "Upon such plea, the defendant may give in evidence any matter which, if pleaded in the present writ of right or action of dower, would bar the action of the plaintiff."

Under these provisions, no other plea than the general issue is required in an action of ejectment.

In Roberts vs. Lewis, 144 U. S., 653, the Court say (page 656): "But since 1872, when Congress assimilated the rules

of pleading, practice and forms and modes of procedure in actions of law, in the Courts of the United States to those prevailing in the Courts of the several states, all defenses are open to a defendant in the Circuit Court of the United States, under any form of plea, answer or demurrer, which would have been open to him under like pleading in the Courts of the state within which the Circuit Court is held."

IV.

Assignments of error 121 to 129 inclusive, relate to evidence offered by the plaintiff in rebuttal of the defendant's evidence, which was excluded by the Court.

The evidence had no tendency to rebut the evidence given by the defendant, and was immaterial and irrelevant.

1st. Assignment of Error 121 relates to the exclusion of Exhibit 175 A, p. 259, which contains the declaration, plea and verdict in a suit of the United States against Henry Nicholson, Jr., and his sureties, upon his bond of Deputy Surveyor. Henry Nicholson, Jr., was a Deputy Surveyor, who made the original survey of township 18 north, range 3 west, the township in question.

The evidence on the part of the defendant showed that upon complaint being made to the land department that there had been frauds in the surveys in different townships in Michigan, the department caused examinations to be made to ascertain whether such frauds had been committed, and from such examinations determined that they had been committed, and on that account caused the resurveys to be made to correct the original surveys.

This proceeding was wholly within the jurisdiction of the

land department, and its determination upon the subject was final and conclusive, and could in no manner be affected by the suit, or the result of the suit referred to in the evidence tendered.

This is conclusively established by the following decisions:

Knight vs. U. S. Land Association, 146 U. S., 161 at 176, 177, 178, 179, 182.

Cragin vs. Powell, 128 U. S., 691 at 697, 698. Tubbs vs. Wilhoit, 138 U. S., 134 at pp. 143, 144. See vs. Johnson, 116 U. S., 48. Carr vs. Fife, 156 U. S., 484.

Assignments of Error 122, 123, 124, 125 and 126, relating to Exhibit 175 B, p. 264, Ex. 176, p. 271, Ex. 177, p. 272, Ex. 178, p. 273, Ex. 179, p. 274, are of like character and are governed by the same considerations.

2d. Assignment of Error 127 relates to Exhibit 180, p. 276, Assignment of Error 128 relates to Ex. 181, p. 277, and Assignment of Error 129, relates to Ex. 182, p. 278. These exhibits constitute a request made by the Commissioner of the General Land Office, under date of January 15th, 1853, to the Surveyor-General to send some person to the General Land Office, with whom conference could be had and who should bring information from the Surveyor-General's office; and the reply of the Surveyor-General to such letter by which it appears that he sent George S. Frost from his office with certain information showing the condition of the work in the Surveyor-General's office.

There is nothing in this correspondence that has any bearing upon the defence which has been made in the case. The subject of the correspondence appears to be entirely immaterial.

BENTON HANCHETT, Attorney for Defendant in Error.



The Supreme Court of the United States

Filed Mar 12 5

MICHIGAN LAND & LUMBER COMPANY, LIMITED,

Plaintiff in Error.

VS.

CHARLES A. RUST, SURVIVOR, ETC..

Defendant in Error.

MAR29 1897

LAMES H. M. CHENNEY,

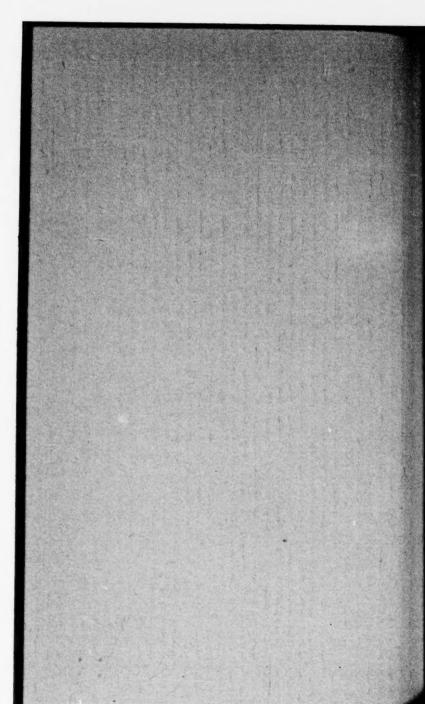
CLERK

Brror to the Court of Appeals for the Sixth Circuit.

Memorandum of Argument of Asbjey Pond for Befendant in Error.

DETROIT:

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The Supreme Court of the United States

MICHIGAN LAND & LUMBER COMPANY, LIMITED,

Plaintiff in Error.

VS.

CHARLES A. RUST, SURVIVOR, ETC.,

Defendant in Error.

Error to the Court of Appeals for the Sixth Circuit.

Memorandum of Argument of Ashley Pond for Defendant in Error.

In the trial court (the Circuit Court of the United States for the Eastern District of Michigan) the action was ejectment, Plaintiff in Error vs. Defendant in Error, to recover certain lands described, situate in the County of Clare, State of Michigan.

Plaintiff claimed title from the State of Michigan under patent to Edward W. Sparrow, dated October 14, 1887, and deed from Sparrow to it, dated October 31, 1887, and attributed the title of the State to the Act of Congress of September 28th, 1850, commonly known as the Swamp Land Grant Act.

Defendant claims title under patent from the United States issued subsequently to September 28th, 1850, to wit, May 10, 1870, which patent was based upon a purchase of said premises at a sale at public auction shortly before the date of such patent.

After both parties had introduced evidence and rested, the Court instructed the jury to render a verdict for the defendant. Judgment followed, and upon error that judgment was affirmed by the Court of Appeals.

Stated briefly, plaintiff's case was made by introducing in evidence:

(1) Copy of a communication dated November 21, 1850, from the then Commissioner of the Land Office, to the Surveyor-General of Michigan, the material part of which communication was as follows, to wit, Exhibit 3 A, Record, p. 17:

"General Land Office, November 21st, 1850.

"Sir—By an act of Congress entitled 'An act to enable the State of Arkansas and other States to reclaim the "swamp lands" within their limits,' approved September 28, 1850, it is directed 'That to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands made thereby unfit for cultivation, which shall remain unsold at the passage of this act, shall be, and the same are hereby granted to said State.'

"1st. By the 4th section of this act, it is directed that the provisions of it 'shall be extended to, and their benefits be conferred upon each of the other States of the Union in which such swamp and overflowed lands may be situated."

"2nd. And 'that in making out a list and plats of the lands aforesaid, all legal subdivisions, the greater part

of which is "wet and unfit for cultivation," shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom.'

"You will please make out a list of all the lands thus granted to the State, designating those which have been sold or otherwise disposed of since the passage of the law,

and the price paid for them when purchased.

"The only reliable data in your possession, from which these lists can be made out, are the field notes of the surveys on file in your office, and if the authorities of the State are willing to adopt these as the basis of those lists, you will so regard them; if not, and those authorities furnish you satisfactory evidence that any lands are of the character embraced by the grant, you will so report them.

"The following general principles will govern you in

making up these lists, to wit:

"Where the field notes are the basis, and the intersections of the lines of swamp or overflow with those of the public survey alone are given, those intersections may be connected by straight lines, and all legal subdivisions, the greater part of which are shown by these lines to be within the swamp or overflow, will be certified to the State, the balance will remain the property of the Government.

"You will make out lists of these lands as early as practicable, according to the following form, one copy of which you will transmit to the Land Office and another to this office. The lands selected should be reserved from sale, and after those selections are approved by the Secretary of the Interior, the Register should enter all the lands so selected in his tract books as 'Granted to the State by Act of 28th September, 1850, being swamp or overflowed lands.' And on the plats enter on each tract 'State, Act 28th September, 1850,' Copies of the approved lists will be sent to the Registers for this purpose.

"Your early attention is required in this matter, that the grant may be disposed of as speedily as possible. "Very respectfully, your o'bt serv't,

"J. BUTTERFIELD,

"Commissioner."

(2) Copy of a communication under date of December 6, 1850, from the Surveyor-General of Michigan to the then Governor of Michigan, which is as follows, to wit-Exhibit 4, Record, p. 19:

> "Surveyor-General's Office," "Detroit, December 6, 1850,

"His excellency John S. Barry:

"Sir-I have the honor herewith to inclose to you a copy of instructions to me to designate the swamp lands granted to the State of Michigan by the act of Congress approved September 28, 1850, entitled 'An act to enable the State of Arkansas and other States to reclaim the "swamp lands" within their limits.' To enable me to carry out the views of the government in making this

grant, I have to request of you information:
"1st. Whether the State authorities are willing to adopt the field notes of the surveyors on file in this office as the basis of the lists of all lands thus granted

to the State, or

"2d. Whether the State authorities conclude to have the surveys made to determine the boundaries of the swamp or overflowed lands.

"With great respect, I am your ob't serv't,

"CHARLES NOBLE,

'Sur.-General."

The material portion of these communications I have italicized as above. (*)

(*) An act was passed by the Legislature of the State of Michigan, approved June 28th, 1851, the first section of which reads as follows,

[&]quot;The People of the State of Michigan Enact: That they adopt the notes of the surveys on file in the Surveyor-General's office as the basis on which they will receive the swamp lands granted to the State upder date of September 28, 1850."

(3) Partial copy of a list of lands, dated March 29th, 1852, made by the then Surveyor-General for Michigan, and forwarded to the Commissioner of the Land Office at Washington—Exhibit 26, Record, p. 36. This list is headed "No. 1, Grand River Land District," and at its foot is the following certificate by the Surveyor-General:

"The above list of swamp lands in the Grand River Land District, which has been made up in accordance with the instructions from the General Land Office, dated Nov. 21, 1850, embraces all the lands in said district, except such as may be found in townships which have been ordered to be resurveyed. The districts reported by Judge Burt and Hiram Burnham to be fraudulent are embraced in the list and marked 'F.'"

(4) Partial copy of a list of lands purporting to be a certified copy of a list approved by the Secretary of the Interior, forwarded to the Governor of Michigan, approved Oct. 27, 1853, forwarded to the Governor, January 31, 1854.—Exhibit 27, Record, p. 37.

These lists contain the lands in dispute.

- (5) Copy of map of the township containing the lands in dispute, and other lands, forwarded from the General Land Office to the Governor of Michigan, in connection with the above lists.—Exhibit 32, Record, p. 47.
- (6) Some other evidence was introduced by the plaintiff, to which reference is made in the brief of my associate; but substantially the plaintiff's case rests upon the evidence above recited.

No attempt was made to show that the lands in dispute were in *fact* swamp and overflowed.

It appears by the record that the action of the Secretary of the Interior in refraining from issuing patents for these lands to the State, and causing them, after his approval of such lists, to be sold at public auction and patented to the purchaser at such sale, was based upon the fact that after such approval the township containing said lands was resurveyed, and it appeared by such resurvey that said lands were not in fact swamp and overflowed.

The contention on the part of the plaintiff is:

- 1. That the approval, by the Secretary of the Interior, of the lists containing the lands in dispute, and the sending of a copy of such lists to the Governor of the State, operated as a final and conclusive identification of said lands as enuring to said State under said act of September 28, 1850.
- That the act of March 3, 1857, confirmed the title to said lands in the State.

That act provides that the selection of swamp and overflowed lands granted to the several States by the act of September 28, 1850, "made and reported to the Commissioner of the General Land Office so far as the same shall remain vacant and unappropriated, and not interfered with by an actual settlement under any existing law of the United States, be and the same are hereby confirmed and shall be approved and patented to the several States in conformity with the provisions of the act aforesaid as soon as may be practicable after the passage of this law." It U. S. Stat., p. 251.

A clear understanding of the occasion for and the circumstances under which such resurvey was made, and of the action of the Secretary of the Interior and the authorities of the State with reference to the identification of the lands to which the State became entitled under said Act of September 28th, 1850, and the adjustment of

such grant, is necessary to an intelligent appreciation of the case on the part of the defendant.

The evidence upon these subjects is fully called to the attention of the Court by the brief of my associate, Mr. Hanchett, and sufficiently for the purpose of my argument in proper connection further on.

1.

The approval by the Secretary, of the lists containing the lands in dispute, did not operate as a final and conclusive identification of such lands as swamp and overflowed within the intent of said act of September 28th, 1850, and thus, *ipso facto*, vest the title to such lands in the State.

1. It was, I submit, not only the right, but the duty, of the Secretary of the Interior, upon discovery, at any time before the issue of patent for lands described in a list approved by him and forwarded to the Governor of the State, that lands were included in such lists which were in fact lands to which the State was not entitled under said Act of September 28th, 1850, to eliminate such lands from such lists and to refuse to issue patents therefor.

⁽¹⁾ The contention on the part of the plaintiff must and does go to the extent of asserting that the approval of

such lists containing such lands was such a complete and final determination that they were of the character described in said Act of September 28th, 1850, as to vest the title thereto in the State with like effect in every respect as a patent would so vest such title; and that, therefore, upon such approval, the title of the State was at once put beyond question except by a bill in equity by the United States.

This proposition, it will be seen, excludes the power of the Secretary of the Interior to make—even with the assent of the State—any correction in a list once approved by him, by striking out, before the issuance of patents, lands discovered to have been erroneously included in such lists. It just as effectively excludes the power in that regard of the Secretary who approved the list as of his immediate or remote successor.

This, I submit, is an exceedingly startling proposition and one to which no court will assent unless it finds itself compelled by some rigid rule of law, and that it is not so compelled seems to me to be entirely clear. No authority to maintain such proposition is produced or can be found. And the reasoning and intimations of this Court are the other way.

In Knight vs. U. S. Land Association, 142 U. S., 161, Mr. Justice Lamar, at page 178, quotes with approval from an opinion of the Secretary of the Interior (5 L. D., 494), as follows:

"The statutes in placing the whole business of the Department under the supervision of the Secretary, invest him with authority to review, reverse, amend, annul or affirm all proceedings in the Department having for their ultimate object to secure the alienation of any portion of the public lands, or the adjustment of private claims to lands, with a just regard to the rights of the public and of private parties. * * * For example, if, when



a patent is about to issue, the Secretary should discover a fatal defect in the proceedings, or that by reason of some newly ascertained fact the patent, if issued, would have to be annulled, and that it would be his duty to ask the Attorney-General to institute proceedings for its annulment, it would hardly be seriously contended that the Secretary might not interfere and prevent the execution of the patent. He could not be obliged to sit quietly and allow a proceeding to be consummated, which it would immediately be his duty to ask the Attorney-General to take measures to annul. It would not be a sufficient answer against the exercise of his power that no appeal had been taken to him and therefore he was without authority in the matter."

And this language was again quoted by Mr. Justice Brewer in Orchard vs. Alexander, 157 U.S., 382.

In New Orleans vs. Paine, 147 U. S., 266, Mr. Justice Brown says:

"Until the matter is closed by final action, the proceedings of an officer of a department are as much open to review or reversal by himself, or his successor, as are the interlocutory decrees of a court open to review upon the final hearing."

In Barden vs. Northern Pacific R. R. Co., 154 U. S., 288, Mr. Justice Field quotes with approval from an opinion of ex-Secretary Noble in Central Pacific R. R. Co. vs. Valentine, 11 Land Dec., 238-246, as follows:

"The very fact, if it be true, that the office of the patent is to define and identify the land granted, and to evidence the title which vested by the act, necessarily implies that there existed jurisdiction in some tribunal to ascertain and determine what lands were subject to the grant, and capable of passing thereunder. Now, this jurisdiction is in the Land Department, and it continues, as we have seen, until the lands have been either patented or certified to for the use of the railroad company. By reason of this jurisdiction it has been the practice of that department for many years past to refuse to issue patents to railroad companies for lands found to be mineral in character at





any time before the date of the patent. Moreover, I am informed by the officers in charge of the mineral division of the Land Department that ever since the year 1867 (the date when that division was organized), it has been the uniform practice to allow and maintain mineral locations within the geographical limits of railroad grants, based upon discoveries made at any time before patent or certification where patent is not required. This practice having been uniformly followed and generally accepted for so long a time, there should be, in my judgment, the clearest evidence of error as well as the strongest reasons of policy and justice controlling before a departure from it should be sanctioned. It has, in effect, become a rule of property."

(2) The language of the Act of September 28th, 1850, is clearly inconsistent with any construction which makes the approval of a list by the Secretary final and conclusive as to the title of the State. Thus:

After making it the duty of the Secretary to make out lists and plats of the lands granted, and to transmit the same to the Governor of the State, and at his request to cause a patent to be issued to the State therefor, said Act continues: "and upon that patent the fee simple of the land shall vest in the State."

Now, some effect must be given to this language, and I submit that that effect must be to hold the identification of the lands granted as *in fieri* until the issue of patent. This is in no way inconsistent with the rulings heretofore made by this Court, that when lands are finally identified and patents issued, the title relates back to the date of the Act.

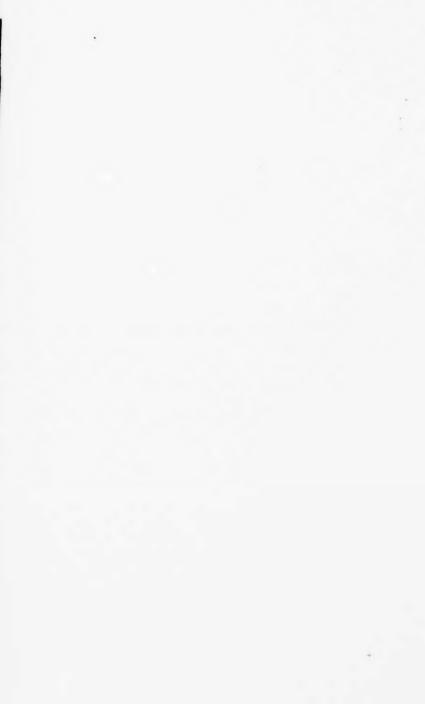
(3) Again, had the Act of September 28th, 1850, not called for the issue of patents, and a list had been approved which contained lands not of the character granted, such lists as to such lands would have been absolutely void.

U. S. Revised Statutes, § 2449:

"That in all cases where lands have been, or shall hereafter be granted by any law of Congress to any one of the several States and Territories; and where said law does not convey the fee simple title of such lands, or require patents to be issued therefor; the lists of such lands which have been, or may hereafter be certified by the Commissioner of the General Land Office, under the seal of said office, either as originals, or copies of the originals or records, shall be regarded as conveying the fee simple of all the lands embraced in such lists that are of the character contemplated by such act of Congress, and intended to be granted thereby; but where lands embraced in such lists are not of the character embraced by such acts of Congress, and are not intended to be granted thereby, said lists so far as these lands are concerned, shall be perfectly null and void, and no right, title, claim or interest shall be conveyed thereby."

I submit that to make lists so void where the making of them is the *final* act to be performed by the land department and to hold them as unchangeable as the laws of the Medes and Persians, when such lists are required by the statute to be followed by a patent, is going beyond reason.

The case of Noble vs. Union River Logging Railroad Company, 147 U. S., 165, is distinguishable. The action of the Secretary of the Interior, the attempted revocation of which was there in question, was the final action with reference to the subject matter and vested title to the right of way in question with like effect as if a patent had





been required and issued, and a revocation of such action, if valid, would operate to divest such title.

After this argument was in manuscript, the opinion of this Court in the recent case of *The Rogers Locomotive Machine Works et al. vs. The American Emigrant Company*, handed down on the 7th of December last, came to my attention. It seems to fully sustain the foregoing contention. Mr. Justice Harlan, referring to the function to be performed by the Secretary of the Interior with reference to the identification of the lands granted to the States under the Act of September 28th, 1850, says:

"When he" (that is, the Secretary of the Interior) "made such identification, then, and not before, the State was entitled to a patent, and 'on such patent' the fee simple title vested in the State. The State's title was at the outset an inchoate one, and did not become perfect, as of the date of the act, until a patent was issued."

II.

The action of the Secretary of the Interior in withholding the lands in question from patent upon the ground that they were not swamp and overflowed and that therefore the State was not entitled to them, was with the knowledge and assent of the highest authority of the State, to wit, its Legislature, and hence such action is not now open to question by the State or by its grantee, even if otherwise it might be so.

This knowledge and assent clearly and conclusively appear by the evidence to which I now proceed to call attention. As hereinbefore stated, the township containing the lands in dispute was, after the approval of the lists containing such lands, resurveyed, and the lands in dispute found by such resurvey not to be swamp and overflowed.

- 1. With reference to such resurvey and its effect upon the action of the Secretary of the Interior:
- (a) A joint resolution, approved February 1, 1842, was passed by the Legislature of the State of Michigan, of which the following is a copy:

"Joint Resolution requesting the President of the United States to cause the survey of certain townships of land.

"Whereas, it has been satisfactorily made to appear to this Legislature, that large districts of lands lying within the limits of the State of Michigan, have been returned by some of the deputy United States surveyors to the general land office, as surveyed, where no surveys whatever have been made, or where the surveys have been so imperfectly done as to be utterly valueless; and whereas, the United States Surveyor-General of this land district has caused the lands so represented as surveyed, to be offered for sale to the very great injury of the State of Michigan, and the citizens thereof, therefore,

"Be it resolved by the Senate and House of Representatives of the State of Michigan, That the President of the United States be requested to cause the subdivisions of the following townships of land situate within the State of Michigan, and which have been represented to have been surveyed, but which have either not been surveyed or have been so imperfectly surveyed that said work is valueless, to be surveyed at as early a day as may be consistent, viz: Towns sixteen and seventeen north, of range three east, and towns fifteen, sixteen and seventeen north, of range four east, and all the towns lying east of the principal meridian, from towns eighteen to twenty-five north, inclusive, and ranges five, six, seven, eight and nine east of town twenty-six north, and also towns sixteen, seven-



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teen and eighteen north, of range six, seven and eight west, including in all eighty-one whole and fractional townships.

"Resolved, That the Governor be requested to submit the foregoing preamble and resolution to the President of

the United States."

- (b) The subject matter of said resolution was, by order of President Tyler, referred to the Surveyor-General at Cincinnati to investigate and report, and such Surveyor-General, after investigation, reported the facts with reference to such surveys to be substantially as in said resolution stated, and also that the surveys of a very large number of townships not mentioned in said resolution were of a similar character.
- (c) Such surveys were found to be fraudulent not only in respect to the lines reported to have been run and courses established, but also with reference to the character of the land, some of the finest portions being represented indifferent, second and third rate, and sometimes swamp.
- (d) By public records and statutes it appears that the attention of Congress was called (presumably by the Secretary of the Interior), to the imperfect and fraudulent character of such surveys, and that it authorized resurveys thereof to be made by the appropriation of large amounts of money to pay the expense of such resurveys.

See Congressional Globe, Feb. 28, 1845.

5 U. S. Stats. at Large, 762.

9 U. S. Stats. at Large, 95, 368, 530, 611.

10 U. S. Stats. at Large, 204, 565, 660.

11 U. S. Stats. at Large, 86.



600 were appropriated "for correction of erroneous and defective surveys in southern Michigan," and by the Act, 9 Statutes at Large, 611, March 3, 1849, \$10,000 were appropriated for "correction of erroneous surveys in Michigan," and by the Act, 9 Statutes at Large, September 30, 1850 (two days after the passage of the Swamp Land Grant Act), \$20,000 were appropriated for "resurveying and correcting erroneous surveys in Michigan."

(e) Such resurveys of townships in Michigan, the original surveys of which were found to be fraudulent or defective, were begun as early as the year 1843, and were in active progress at the date of the passage of the Act of September 28, 1850, and at the time the Secretary of the Interior made his suggestion or proposition to the State that the lands to which it was entitled by said act should be identified by the evidence of the field notes and plats made from the surveys of the public lands.

The first list of lands made by the Surveyor-General under the instructions given him, hereinbefore quoted, was dated March 29, 1852, and the certificate of the Surveyor-General thereto was as follows, to wit:

"The above list of swamp lands in the Grand River land district, which have been made up in accordance with instructions from the General Land Office, dated November 1, 1850, embraced all lands in said district, except such as have been found in townships which have been ordered to be resurveyed. The districts reported by Judge Burt and Hiram Burnham to be fraudulent are embraced in this list and marked 'F'." * * * * * * *

The italics are mine.

The township containing the lands in question was thus marked. Exhibit 26, Record, p. 36.

October 4, 1852, the Commissioner of the General Land Office instructed the Surveyor-General as follows, to wit:

"In those townships resurveyed during the past season it will be necessary to furnish new lists, in explanation of the former ones, but you will be careful to designate them as having been made out in lieu of the former ones," Defendant's Exhibit 83, Record, p. 126.

Under date of December 8, 1852, the Surveyor-General sent to the General Land Office a supplemental list, based upon the resurvey of certain towns, but failed to designate it as in lieu of former lists covering the same townships, and thereupon, under date of June 7, 1853, the Commissioner of the General Land Office addressed the Surveyor-General a letter of which the following is a copy:

"Sir:—In adjusting the swamp land selections in the Grand River District (Mich.) a difficulty has arisen in regard to the proper construction of the supplemental list transmitted to this office, dated December 8, 1852.

"In the letter of 4th October last, the following directions were given: 'In those townships resurveyed during the past season it will be necessary to furnish new lists, in explanation of the former ones—but you will be careful to designate them as having been made in lieu of the former ones.'

"This instruction seems to have been lost sight of, as the supplemental list above alluded to is simply headed 'Supplemental list of swamp lands in townships resurveyed and platted up to December 6th, 1852, in the Grand River District, embracing some townships not included in former lists,' and no further explanation is given. To illustrate the difficulty I will state that in Township 8, Range 2 North and West, the selections in sections 2, 15, 18 and 19 are the same in both the original list and the supplemental list, and cannot be regarded in any other light than as double selections. In section 24 the whole section was included in the original list, while in the supplemental list the s. $\frac{1}{2}$ of n. w. $\frac{1}{4}$ n. e. $\frac{1}{4}$ and s. $\frac{1}{2}$ are the selections.

"Now, which is to govern, the original selection or that in the supplemental list? In Township 9 N., Range 2 West, the selections are in sections 1, 3, 4, 5, 8, 9, 10, 13, 21, 22, 26 and 35 in the original list, while those in the supplemental list are in sections 28, 29, 30, 31, 32, 33 and 35.

"The questions, as you will perceive from the foregoing, are whether the supplemental list is to be regarded as only corrective of the former list, or whether it is to be taken entirely in lieu of the original in the corresponding townships.

"As the work upon this list has been suspended on account of the foregoing difficulties, I have to request that you will give the matter your early attention, and that you will be explicit in your answer, as to the proper construction of said supplemental list." Exhibit 83, Record, p. 126.

The Surveyor-General replied to this letter as follows:

"Sir:-Your letter of the 7th inst. has been received.

"In making the supplemental list of swamp lands in townships resurveyed and platted up to December 6, 1852, your instructions of the 4th of October, 1852, were carefully observed, but it should have been stated either at the head of the list, or in the letter transmitting it, that it was intended to be placed on file in your office in lieu of the former list.

"In all cases of resurveys a list of swamp lands is made up from the plats of resurvey without any reference whatever to the old plat or to the original list made out from the old plats.

"The question as to whether the original or the supplemental list should govern, it was supposed would be decided at your office. As the question is submitted, however, it seems to me that the supplemental list, if made at all, should in all cases govern, and in fact it should be placed in lieu of the original list, as the plats of resurveys take the place of the original plats, whenever any plats are made of resurveyed townships.

"In all the lists hereafter to be made up and forwarded, where the original list has already been sent on, the supplemental list will be considered as a substitute for the original, to take its place on the files, making the original

list of no more account than is the plat of the original survey." Exhibit 92, Record, p. 133.

After this correspondence, new lists, made on the basis of the resurveys, were expressly stated on their face to be in lieu of former lists covering the same territory.

(2) As to the knowledge of the state:

Just when the fact that the Secretary of the Interior was basing his action upon and making new lists from the field notes and plats of resurveys, and assuming to suspend or correct approved lists, does not appear, but a letter of which the following is a copy is found on file in the office of the Commissioner of the Land Office of the State of Michigan —Exhibit 119, Record, p. 171:

"General Land Office, "February 24, 1855.

"His Excellency Kinsley S. Bingham,

"Governor of Michigan, Lansing, Michigan,

"Sir:—The Surveyor-General of Michigan has transmitted to this office a list of Swamp and Overflowed Lands in the Cheboygan District, Michigan, in townships 'resurveyed and platted,' which list 'abrogates and supersedes all lists of swamp lands heretofore made of the townships contained within it.'

"Said list embraces selections in the following townships, viz:

mpa,	V 1 Za .							
"To	wnship	21,	23,			Range	4	West.
	66	22,	23,			46	5	
	66	22,	23,	24,		6.6	6	44
	66	22,	23,	25,		46	-	64
	66	21,	22,	24,	25,	44	8	4.6
	66	22,	23,	24,	25,	63	9	
	66	26,	,	,	,	*6	10	44

"The original selections in the foregoing townships made from the defective plats were approved in lists No. 1, 2 and 3, in the Ionia District, Michigan, certified copies whereof were transmitted to your predecessor, January 13, 16 and 18, 1854.

"In consequence of the alteration necessary by reason of the lists recently received, I have the honor to request a suspension of all action upon the lists heretofore furnished you, so far as these several townships are concerned, until the differences can be ascertained and adjusted."

"With great respect
Your ob't servt.,
JOHN WILSON,
Commissioner."

The township containing the lands in dispute is not mentioned in this letter. It had not then been resurveyed, but as hereinbefore shown, it was one of the townships the survey of which had been reported as fraudulent. It was, however, as hereinbefore stated, included in said approved list. *Exhibit 27, Record, p 37.*

The reception of this letter was reported by the Commissioner of the State Land Office to the Legislature of the State by his report for the year 1855, as follows, to wit—Exhibit 120, Record, p. 172: (Italics are mine.)

"This office was notified in February last, by letter from the Commissioner of the General Land Office, of the resurvey by the general government of considerable tracts of land, embraced in the lists of swamp lands, including several townships in the northern part of the State, situate principally in the Ionia land district, and the same have been, as directed, marked as suspended on our books. Information has also been received from the Surveyor-General's department, that resurveys of a large number of townships in which swamp lands are included, in the northern part of the State, have been in progress the past season. Whether any material difference in the quantity of land enuring to the State under the act of Congress, will be effected by such resurveys cannot as yet be ascertained."

And the following is an extract from the report of the

said Commissioner for the year 1856: (Italics are mine.)

"Patents are now received for all these lands in the State except those situate in the Ionia land district, comprising about 1,200,000 acres, and for these we are assured the patents will soon be forwarded, the making of which have been delayed in consequence of extensive resurveys by the general government, which, in some instances, changes the amount and character of the land." Exhibit 118, Record, p. 170.

A contract for the resurvey of the township in question was made September 17th, 1856,—Exhibit 122, Record, p. 174,—and such township was resurveyed during the last quarter of 1856—Exhibit 114, Record, p. 159—see p. 168—and May 13, 1858, a new list was made by the Surveyor-General, based upon the evidence of the field notes and plats of the resurvey. This list did not contain the lands in dispute, but did contain land not in the prior list made by the Surveyor-General. Exhibit 124, Record, p. 175.

The following is a copy of a letter addressed by the Commissioner of the General Land Office to the Commissioner of the State Land Office—Exhibit 23, Record, p. 31:

"General Land Office, "Dec. 22nd, 1858,

"S. B. Treadwell, Esq., Commr. State Land Office.
"Sir—The subject of the swamp grant of September 28, 1850, so far as the same relates to the State of Michigan, in view of the basis adopted by the State in designating the land granted and the numerous resurveys made since the passage of the law, presents peculiarities which require an action on the part of the authorities of the State

to enable us to adjust the business with proper regard to the evidences in the case. To present the matter is the

purpose of this communication.

"The Surveyors General of the district, from time to time, have reported selections in lists from the evidences of the surveys as originally made. Such selections were examined with the records of this office, and so far as they were found vacant and not interfered with by settlements, were submitted to and approved by the Secretary of the Interior.

"The authorities of the State were immediately thereafter furnished with certified copies of the lists contain-

ing the lands thus approved.

"Since such approvals were made and certified, the Surveyors-General, upon the evidences of the resurvey of many townships, have forwarded lists to supersede and abrogate the reports made in townships described therein. These subsequent selections differ materially from the former ones.

"The patents for probably one-half of the townships in this condition, as originally selected and reported, were prepared and transmitted prior to the receipt of the subsequent reports based upon the evidences of the resur-

vers.

"The balance of the selections originally made, and which are superseded by reports under resurveys, have been approved and certified, but are not carried into patent, nor can they be as thus approved for the reason that the reports made after the resurveys are the only proper evidence upon which our action must be made in determining the grant.

"So far as the patents have been issued it is not intended to make any alteration in the lists, but when the indemnity provisions of the act of 2d March, 1855, come to be executed, a comparison between the reports based upon the original surveys and reports made after resurveys will be made, and where the lands in the original reports do not appear in the subsequent reports, a deduction to that extent will be made from the indemnity certificate. This, it is believed, will be equal justice to all interested.

"The paper herewith inclosed will show in what townships the lands have been patented as first selected, and those townships in which the lands are approved but not patented; and it is forwarded with the request that the proper authorities of the State may elect to receive the grant, with reference to those townships in which the lands have not been patented, as the selections are made

upon the evidences of the resurveys.

"It is our purpose to submit to the Secretary of the Interior, for revocation and approval, so much of the lists, in the several land districts, as embrace the tracts in the condition specified; forwarding at the same time a list of the tracts as subsequently reported for his approval. You will be pleased to present the matters herein contained to the proper State authorities.

"The patents for the swamp lands in Clinton, Ottawa and Newaygo counties, so far as the difficulties above described do not exist, are now in course of preparation, and will be forwarded as soon as they are completed.

"Very Respectfully,
Your obdt servant,
THOS. A. HENDRICKS,
Comm'r."

The inclosed paper—Record, p. 33—designated a large number of townships in which the lands reported to the Commissioner of the General Land Office, from the evidence of the original surveys, had been approved and patented to the State, and a large number of townships in which the lands so reported from the evidence of the original surveys had been approved but not patented. The township here in question, to wit, 18 North, 3 West, was in the latter class.

May 15, 1858, part, and February 6th, 1860, the residue of the archives of the office of the Surveyor-General for Michigan were turned over to the Commissioner of the State Land Office, and included amongst the documents so turned over were the field notes and plats of both the original and resurveys of townships in said State and copies of the original and supplemental lists of swamp

lands which had, prior to that time, been forwarded by the Surveyor-General to the General Land Office at Washington. Exhibit 17, Record, p. 27.

After said archives of the Surveyor-General's Office were so delivered to the Commissioner of the State Land Office, that officer caused to be made, evidently from a thorough examination of the field notes and plats of both surveys, the said copies of the said original and supplemental lists, and the approved lists and patents up to that time received by the State, a series of statements showing fully and in detail the situation with reference to the adjustment of said grant.

Such examination, and the result of such examination, are shown by the report of the Commissioner of the State Land Office, for the year 1860, to the Legislature at its session for the year 1861—Exhibit 160, Record, p. 226—as follows, to wit: (The italics are mine.)

"The complications of the swamp land question between the State and general government, have not been diminished during my administration, and in view of the constantly increasing difficultes produced by delay, I commend them to your particular attention. With much care I have caused to be prepared lists conclusively showing the discrepancies which prevent an adjustment of the questions which have arisen, and add a summary thereof hereto.

"5,857,462.05 acres have been approved to the State, of which 5,049,125.44 acres have been patented, leaving unpatented and unadjusted, 868,336.61 acres. This statement has been made from the approved lists and patents, and is believed to be very nearly correct. But the amounts may be somewhat changed as errors in descriptions are discovered and corrected, and also, the actual amount available, may be materially altered by the discrepancies between old and resurveys. 133 townships (74 of which were

patented as approved) were approved by the evidences of the old survey, and are affected by subsequent resurveys In some of the townships only two or three miles of section line were run. On an average about one-half of the lines in these townships were run, consequently the topography, subdivisions of sections, amount and location, have been in all somewhat, and in some very much altered, the quantity of swamp land generally, being much more on the plats of the old than the resurvey. As the plats of resurvey of these townships were completed, the Surveyor-General, in accordance with the evidences thereof, made (except 7 townships) new lists of swamp land selections from the plats of the resurvey. Of said 7 townships, this office has calculated the amount, and used it for the purpose of this statement, as if given by the Surveyor-General. From this new list, as far as it regards the 74 patented townships, a list has been made of such subdivisions contained therein as are, not in the patents, amounting to 67,393.44 acres. The amount given in the patent for said 74 townships is 636,670.89 acres, from which we deduct 2,121 acres that cannot be located without a precedented alteration of the plats of resurvey and 3,986.18 acres that cannot be located at all, and 10,363.64acres excess in patent over resurvey in such subdivisions as can be located on the plats of resurvey, and add 2,579.49 acres excess in resurvey over patent in such subdivisions as can be located on the plats of resurvey, and we have left us the available amount patented in said townships 622,779.56 acres, which is 241,476.15 acres more than is contained in the new list in the same townships.* In the remaining 59 townships, whic', are not yet patented, the amount approved is 306,015,53 acres, while the amount in the new lists thereof is only 225,412.81 acres, being an excess in the approved lists over the amount in the resurvey of 80,602.52 acres, of which, if patented as approved, about 3,000 acres could not be located on the plats of the resurvey.

"We gather from the correspondence, on file in this office, between the State authorities and the department at Washington, that the general government proposes to adopt throughout, the resurvey as the basis of patents. Aside from the foregoing townships, there remains 187, containing 502,321.28 acres, situated west of range 2 west (except towns 8, 9 and 10, north of range 2 west), in the

^{*}That is, the State had received in these 74 townships 244,476.15 acres of land to which it was not entitled.

northern, northwestern, and western parts of the lower peninsula, which are approved by final surveys, but which are not yet patented. Besides this last amount, five townships near Keweenaw Bay are not yet patented, but are approved by final surveys, and either all or a portion thereof have been reserved by order of the President."

This report having been laid before the Legislature, it was referred to a committee of the House of Representatives, which made a report containing the following, to wit:

"In order to give to the House a better understanding of the whole matter, the committee have prepared a statistical table marked 'B,' whereby it will be seen that the whole amount granted to the State is 5,890,361.49 acres, of which the State has received patents for 5,082,375.94 acres, leaving unpatented, 807,995.55 acres. By reference to the statistical table hereto annexed, the amount in each county will be easily ascertained." *Exhibit 158*, *Record*, p. 222—see p. 223.

The statistical table mentioned is Exhibit 158, Record, p. 224.

At the same session of the Legislature, and after said report of its committee, an act was passed, of which the following is a copy:

"An act to provide for selecting and locating the unselected deficiency existing in the quantity of lands due to the State of Michigan, under the act of Congress, approved May twentieth, eighteen hundred and twenty-six, and for any other land grant made by act of Congress to this State.

"Section 1. The People of the State of Michigan enact, That the Commissioner of the State Land Office be and he is hereby authorized and directed to cause lands, sufficient to supply the existing deficiency in the quantity accruing to this State, by virtue of the act of Congress, approved May twentieth, eighteen hundred and twentysix, the ordinance of admission, July twenty-fifth, eighteen hundred and thirty-six, and any other land grant since made to this State by act of Congress, to be selected and located in parcels in conformity with the provisions of the several acts making the same.

"Section 2. This act shall take immediate effect.

"Approved March 11, 1861."

Whatever may have been the actual intention of the Legislature, it is beyond question from the evidence that the Commissioner of the State Land Office construed the above-quoted act as authorizing him to adjust with the proper officers of the United States the "complication of the swamp land question," which, as above appears, he had reported to exist.

The evidence that the Commissioner so construed the said act is found in subsequent reports made by him to the Legislature, which reports also showed the progress made from time to time in the adjustment of such "complications," thus:—

The following is an extract from his report for the year 1861:

"A complete list of the unpatented swamp lands, for which the State is justly entitled to patents, by virtue of the act of Congress of the 28th September, 1850, has been made and forwarded to the Commissioner of the General Land Office, with an urgent request that patents issue as speedily as possible. A similar list of the lands denominated 'Green Lands' has been made and forwarded to that department; and we have the assurance of the Commissioner that the matters there referred to shall have as speedy examination and adjustment as the business of his department will allow." Exhibit 160, Record, p. 228.

The following from his report for the year 1862:

"It is with great pleasure that I am able to report that my proceedings under the law of 1861 in relation to the unpatented swamp lands, have met a prompt response from the present Commissioner of the General Land Office, and that we have received patents for 362,463.28 acres, and that in the communication heretofore referred to, the Commissioner informs me that 'we have also prepared patent No. 15, containing 98,691.25 acres; and patent No. 16, containing 72,585.49 acres,' making a total of 533,730.02 acres since last report. This is in the Ionia and Traverse City land districts.

"It is confidently believed that all the questions in relation to our land grants, heretofore unsettled, between the general government and this State, are in progress of a speedy and satisfactory adjustment." Exhibit 160,

Record, p. 228.

Note the words I have placed in italics.

His report for the year 1864—Exhibit—which went to the Legislature at its session in 1865, contains a table which purports to show by counties the condition of the grant as to adjustment, and by such table it appears that the total swamp land to which the State was entitled was 5,891,598.94 acres, of which it had received patents for 5,617,115.08 acres, leaving unpatented 274,483.86 acres, and by such table it appears that all the swamp lands to which the State claimed to be entitled in the county containing lands in controversy in this suit, had already been patented, to wit, Clare.

His report for the year 1865 speaks as follows:

"Under Act. No. 123, session laws of 1861, providing for the selecting and locating the existing deficiency of this class of lands due the State by virtue of the act of Congress, approved May 20, 1826, and for all subsequent land grants made by Congress to this State, my immediate predecessor forwarded to the Commissioner of the General Land Office, a carefully prepared list of all deficiencies, as a basis by which the State could select such balances due. This statement was acted upon by the Commissioner of the General Land Office, and transmitted to this office, where it was again compared and found to disagree in some material points from the plats and records in this office, and it was again forwarded to the General Land Office for comparison and correction, and has not yet been returned to this office; hence no selections on account of the deficiencies have as yet been made."

Suspending quotation from these reports for a few moments:

May 18, 1866, the Secretary of the Interior approved a list of lands made up on the basis of Supplemental List 3—Exhibit 124, Record, p. 175—which list included the lands in controversy, and May 26, 1866, a certified copy of this list was forwarded to the Governor of the State of Michigan. Exhibit 127, Record, p. 178.

. May 31, 1866, the Governor of Michigan acknowledged receipt of the list above mentioned, which was known as approved list No. 10, Ionia, and requested that patents for the lands included in such lists should be issued to the State of Michigan as soon as practicable, conveying the fee simple title thereof to the State. On June 21, 1866, such patent issued. Exhibit 130, Record, p. 181.

Following this, the Commissioner of the State Land Office reported to the Legislature at its session commencing January, 1867, as follows, to wit:

"We have received approved lists of about 231,000 acres of the swamp lands, which were omitted in former lists, on account of the difficulty of making the selections, by reason of the changes made between the old or fraudulent surveys in some sections of the State, and the resurveys." Exhibit 160, Record, p. 229.

And nearly two years later the Commissioner reported as follows, to wit:

"The entire amount of swamp lands conveyed to the State by the act of Congress have been patented, with the exception of 40,000 acres, lying in Cheboygan and Houghton Counties." Exhibit 160, Record, p. 229.

Annexed to this report is a tabulated statement showing the condition of the grant up to January 1, 1868. By this statement it appears that on January 1, 1868, the State only claimed as unpatented 35,308.47 acres, situated in Cheboygan County, and 4,295.73 acres situated in Houghton County. Aside from these two counties the entire grant is shown to have been adjusted and patents received.*

November 13, 1869, nearly a year after the last above mentioned report of the Commissioner of the State Land Office, the lands here in dispute were sold by the United States at public auction and purchased by William A. Rust, and May 10th, 1870, patent for such lands issued upon such sale. Exhibits 38, 39, 40, Record, pp. 60 and 61.

In the light of this history, I submit that the State must be held to have assented to the course pursued by

Now, it goes without saying that vast quantities of these lands were not of the character, but of a very much more valuable character than the lands described in the act making the gift; for it is impossible to believe that one-sixth of all the lands within the State are, or were in 1850, swamp and overflowed so as to be unfit for cultivation.

^{*}That the method adopted for the identification of the lands to which the State became entitled under the grant of 1850 was excessively liberal toward the State cannot be open to question. Under its operation, within six years after the date of the gift, the State had received patents for over 4,000,000 acres, and more than eighteen years before the beginning of this suit patents for nearly 6,000,000 acres, almost one-sixth of all the lands within its boundaries,

the Secretary of the Interior in withholding from patent lands carried into approved lists upon the evidence of the field notes and plats of the original surveys in townships which were afterwards resurveyed, which, by the field notes and plats of such resurveys did not appear to be swamp.

I cannot better conclude the argument upon this part of the case than by an apt quotation from the opinion of the Court of Appeals of the Sixth Circuit, in the case of the State of Michigan vs. The Jackson, Lansing & Saginaw Railroad Co. et al. (69 Fed. Rep., 116). Judge Severens, speaking for the Court, says:

"Whatever may have been the original understanding of the legislature of the State (a matter we have discussed in the former case), it is clear that the State cooperated with the general government in the final adjustment of the grant of 1850 upon the general principle and purpose of reaching the real truth and justice of the matter, and by a method wholly inconsistent with its present contention. By the method thus assented to, it has received a large amount of land which it would not otherwise have obtained, and which, or the proceeds of the sales thereof, it keeps. If there has been a departure from the original intention of the legislature by the agents of the State intrusted with the duty of looking after its interests in the settlement of the grant, the course pursued has been public and open. It would seem that what was well known to those at all conversant with the general subject, and being of facts and transactions exte ding through so many years, should be regarded as known to the State. But it is not necessary to rely upon presumptions. Express knowledge was communicated to successive legislatures by the reports of the Commissioner of the State Land Office, and messages from the executive. It was informed, as early as 1869, that by the method which had been pursued, and with which it had been previously made acquainted, the land grant had been practically adjusted and substantially closed up. It had then received the nearly 6,000,000 acres of swamp lands,' which Governor Crapo said, in his message to the

legislature in 1867, 'were donated to the State by the act of Congress of 1850.' That communication indubitably showed the understanding of the governor to be that the State had then acquired substantially all the lands due to it under the grant."

III.

As to the Act of March 3d, 1857.

1. It is questionable at least if lists made by a Surveyor-General from field notes and plats, for the information of the Secretary of the Interior, to enable him to identify lands in favor of the State by the use of such field notes and plats for such identification, or lists approved by the Secretary of the Interior in such a case, are "selections" within the meaning and intent of said act of March 3rd.

The purpose of that act was to confirm to the States lists which constituted selections made by them, and with reference to which the Secretary of the Interior had delayed and neglected to act.

In speaking upon this subject in *Tubbs vs. Wilhoit*, 138 U. S., 137, Mr. Justice Field says.

"In consequence of the delay in certifying the lists and the inconveniences which followed, the legislatures of several States, in which such lands existed, undertook to identify the lands and dispose of them, and for that purpose passed various acts for their survey and sale and the issue of patents to purchasers. The conflicts which thus arose between parties claiming under the State, and parties claiming directly from the United States, led to various acts of Congress for the relief of purchasers and locators of swamp and overflowed lands. * * * * Act of March 3, 1857." * * *

Now, no such situation as this existed in the State of Michigan. There had been no such delay and neglect of the Secretary of the Interior as to call for any remedial legislation from Congress. The record shows that the Secretary of the Interior had proceeded in identifying the lands to which the State of Michigan was entitled, with reasonable diligence, and that the only reason why he had failed to issue patents to the State for lands in townships containing the lands in dispute was, as I have above indicated, the fact that the original survey had been reported as fraudulent, and that a resurvey was under consideration and intended to be had.

But if this contention should be held not sound, then—
2. It is clear, I submit, that said act of March 3, 1857, cannot be held to apply to a situation like the one under consideration.

That situation was this, to wit: The Surveyor-General had made a list from the field notes and plats of a survey of the township containing the lands in dispute, which survey had been reported fraudulent and a resurvey of which was in contemplation, and, inadvertently it would seem, this list had been used by the Secretary of the Interior in making a list which he approved. After making such approval, however, and after a copy of such approved list had been sent to the Governor of the State, action upon it had been by the Secretary suspended: that is, the issue of patents withheld, and a contract for the resurvey of the township entered into and such township resurveyed. Exhibit 123, Record, p. 17%.

Now it is, I submit, incredible that Congress intended to disregard this situation, and to confirm lands to the State according to a survey and plat which had been declared fraudulent and superseded by a new survey and a new plat.

IV.

Upon the facts disclosed by the evidence with reference to the Acts of the United States and the State upon the subject of the adjustment of the grant by the Act of 1850, the State is estopped to assert that by said Act, or the actions of the Secretary of the Interior in performing the duties imposed upon him thereunder, or by said act of March 3, 1857, the title to the lands in dispute passed to it, and said estopped binds plaintiff as grantee of the State.

Even if it could reasonably be contended that lands situated as those in dispute in this case were within contemplation of the Act of 1857, yet I submit that the State is estopped to claim said lands thereunder.

The State, as the evidence shows, was advised of the intention of the United States not to recognize such act as applicable and not to issue to the State patents for the lands in question, and it permitted the United States to carry that intention into effect and to make other disposition of said lands.

In answer to this proposition that the State is estopped, the learned counsel for the plaintiff in error assert that—"It is settled law in this State that under its statutes, title to land cannot pass by estoppel in pais, nor can an equitable defense be set up to defeat the legal title," and they cite as supporting this assertion Ryder vs. Flanders, 30 Mich., 336, and Hayes vs. Livingston, 34 Mich., 383.

I quote from counsel's brief in the court below. At this writing I have not been favored with their brief for this court.

Now:

- (1) Such is not the settled law of this Court—Dickinson vs. Colgrove, 100 U.S., 578, 580, 584; Kirk vs. Hamilton, 102 U.S., 68, 78.
- (2) We contend for no doctrine inconsistent with these propositions as illustrated and applied by the cases cited.

The first of the propositions applies, and only applies, when the party setting up the estoppel relies upon a title derived from the party against whom the estoppel is invoked; and the second to a case where the legal title is admittedly in the plaintiff and the defendant sets up an equitable title.

But we do not claim to derive our title to the lands in dispute from or through the plaintiff by estoppel or otherwise, nor do we set up an equitable defense to defeat a legal title conceded or proven to be in the plaintiff. We base our title upon patents from the United States.

The plaintiff's contention is that before the issue of such patents the title had passed from the United States to it, and to sustain such contention alleges:

(1) That the lands in dispute were swamp and over-

flowed within the meaning of the Act of Congress of September 28th, 1850.

- (2) That if they were not so in fact, they were adjudged to be so by the action of the Secretary of the Interior.
- (3) That selections of the lands in dispute as swamp lands had been made and reported to the office of the Surveyor-General prior to March 3rd, 1857, and that therefore the Act of 1857 confirmed title in the State.

We answer, that the State, by its action, is estopped:

- To contend that the lands in dispute were of the character described in said Act of Congress of September 28th, 1850;
- (2) To contend that the Secretary of the Interior made the adjudication upon which it relies; and
- (3) To prove that selections of the lands in dispute had been so made and reported prior to March 3, 1857.

In other words, our contention is that the State is estopped to assert the existence of certain facts in pais, the existence of which is essential to its contention that the legal title to the lands in dispute ever vested in it; and I submit that no case can be found inconsistent with our right to thus invoke the doctrine of estoppel.

Again, counsel for plaintiff contend that there can be no estoppel unless there has been fraud or deception or gross negligence amounting to fraud on the part of the party sought to be estopped, and insists that that is not the case here. Now:

- 1. There are exceptions to this proposition. See per Field, J., in *Brant vs. Virginia Coal and Iron Co.*, 93 U. S., 326.
- An element of fraud or gross negligence on the part of the State of Michigan does, in fact, appear here; as thus:

If, when the Legislature of the State was advised that the Secretary of the Interior was proceeding to revise lists which he had approved and was making new lists on the basis of the resurveys, it did not intend to assent, it was, on its part, either fraud or gross negligence amounting to fraud, to permit the Secretary to proceed in that regard without protest upon its part.

On the other hand, if the Legislature did intend to assent, it would now operate as a fraud upon innocent parties purchasing from the United States to permit it to repudiate such assent.

It will, I presume, be contended, and authorities cited in support of such contention, that the doctrine of estoppel in pais cannot be invoked against a State. But I am happy to be able to say that whatever may be ruled elsewhere in that regard, the Supreme Court of Michigan refuses to recognize as sound a principle which affirms that the State is not subject to the laws of common honesty its dealings with reference to property and property lights, and hence that it can repudiate the conduct of its agents acting with apparent authority on its behalf, no matter how long it has, through all its departments, acquiesced in such conduct, and enjoyed the benefit of its

results, or however inequitable the consequences of such repudiation may be.

Attorney-General vs. Ruggles, 59 Mich., 123, was an information seeking to have certain part-paid certificates for the purchase of land from the State delivered up to be canceled, on the charge that they had been obtained to be issued by fraud. It appeared that a prior suit which had been instituted for a like purpose had been, by certain State officers, settled and discontinued. In this case it was sought to avoid such settlement on the allegation of want of authority in the State officers to make such settlement, and that they had been imposed upon and deceived as to the facts. The relief asked was denied. In the course of the opinion Morse, J., says (the italics are mine):

"I have no doubt of their (the State officers in question) power to make such settlement." The State must have some agent or agents through which it may act. It cannot be a myth. Its officials must, from the very nature of things, have power to conclude it. As heretofore shown, the Legislature granted unreserved power to the land grant board to dispose of these lands. Its authority to do so is not denied. This board, by its acts and its acquiescence, empowered the Commissioner to make these sales."

Again: "As far as these lands now in suit are concerned, there has been a full settlement, and the money paid by defendants is in the State treasury. There ought to be some time when a man's liabilities can be ended, after payment of all that is asked by the officials representing the State. I see no reason to distinguish this case, although the State is a party, from like cases between individuals."

State vs. F. & P. M. R. R. Co., 89 Mich., 481. This was a bill in equity by the State seeking to quiet its title to a large amount of land. The State claimed the lands in controversy under the same act of Congress and by entirely similar action of the Secretary of the Interior and the General Land Department and of the State as it claims the land in controversy here. The court below decreed in favor of the State, but upon appeal this decree was reversed and the bill dismissed. The opinion was unanimous. The only question considered was that of estoppel. Justice Grant, speaking for the court, says:

"That the State, as well as individuals, may be estopped by its acts, conduct, silence and acquiescence is established by a line of well-adjudicated cases."

He then cites and comments upon some eight or nine cases, * including the case of Attorney-General vs. Ruggles, supra, and then:—

"Applying the principles of the above cases and and others that might be cited, to the present case, I can find no escape from the conclusion that the claim of the complainant has become stale, and that it is now estopped to assert to title in itself. The claim of the State has no foundation in equity, justice or good conscience."

A further quotation from the opinion of Judge Severens in State of Michigan vs. Jackson, Lansing & Saginaw R. R. Co., supra, is apt in this connection:

Penegra vs. Munz. 29 Fed. Rep., 830. See p. 836, Cahn vs. Barnes, 5 Fed. Rep., 326. See p. 334, Hough vs. Buchanan, 27 Fed. Rep., 328,

And to the proposition "that the law of estopped in a proper case applies to the government. "I. S. cs. McLaughlin, 30 Fed. Rep., 147, and per Brewer, J., in U. S. cs. M., K. & T. Ry. Co., 37 Fed. Rep., 68, 71.

^{*}Among the cases so cited are the following, which, as here, arose out of dealings of States with two different land grants, to wit:

"It is a rule devised for the protection of the public that the State shall not be held responsible for the acts of its agent when done in excess of his powers. Assuming, for the moment, that there was an excess of power by the officers of the State, what is the application of the above-stated rule to the circumstances as we now find them? It is a fit rule to apply to a transgression which the State has not condoned; but it has no application to a case in which no question of morals is involved, but where a course of action has been pursued with the knowledge and acquiescence of the State in the management and disposition of its property interests for so long a time that the public have been led to reasonably believe that they may act upon the assumption that what has been done with the sanction of the State was validly accomplished. To apply the rule as the State asks us to apply it here would be to pervert it to an agency for mischief and wrong. The public have supposed, and had a right to suppose, that they could deal with the lands in the State upon the status given them by the action of the public officials of the State and of the United States, without dissent from either government. In a justly inspired confidence in the integrity and validity of this public action, several hundred thousand acres of land in the State have been bought from the United States 1 citizens who are bona fide purchasers, and whose titles are mere nullities if this contention of the State can be main-It was for the public interest that the status of the lands should be settled, and that they should not remain as stumbling blocks in the progress of the improvement of the country. The State cannot be permitted to say that it has slept during all this long period and abandoned its sovereign duties to its citizens, as well as its reciprocal moral obligations to the government which had made it so magnificent a gift. The State is not to be regarded as a mere machine, incapable of intelligence or conscience. And while it is necessary and right to restrain or annul the unauthorized acts of its agents by which its interests might be impaired, yet there must come a time, after long-continued acquiescence in public action with knowledge of it, when, in the interest of its citizens, the State itself shall be precluded from despoiling others by the assertion of its original rights."

It is true that the Ruggles case and the case of the State of Michigan vs. Jackson, Lansing & Saginaw R. R. Co., from the opinion in which the above is quoted, were on the equity side of the court, but if, as I have above contended, estoppel in pais can be availed of by the defendant in an ejectment suit, the doctrine of those cases and of that opinion is applicable here.

V.

Counsel for plaintiff in error allege errors in various rulings of the Court with reference to the admission and exclusion of evidence; but if the arguments that we make upon the propositions we discuss are sound, these rulings are immaterial. The result in the court below should have been the same had they been made in favor of plaintiff.

ASHLEY POND,

Of Counsel for Defendants in Error.



OPINION



Statement of the Case.

MICHIGAN LAND AND LUMBER COMPANY v. RUST.

ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

No. 57. Argued October 25, 26, 1897. - Decided December 13, 1897.

The act of September 28, 1850, c. 84, granting swamp lands to the several States, was a grant in præsenti, passing title to all lands which at that date were swamp lands, but leaving to the Secretary of the Interior to determine and identify what lands were, and what lands were not, swamp lands.

Whenever the granting act specifically provides for the issue of a patent, the legal title remains in the Government until its issue, with power to inquire into the extent and validity of rights claimed against the Government.

Although a survey had been made of the lands in controversy which indicated that they were swamp lands, it was within the power of the land office at any time prior to the issue of a patent to order a resurvey and to correct mistakes made in the prior survey.

The facts in this case clearly show an adjustment of the grant upon the basis of the resurveys, and their acceptance by the officer of the State charged by the act of Congress with the duty of so doing, and this

makes such adjustment final and conclusive.

The act of March 3, 1857, c. 117, did not operate to confirm to the State of Michigan the title to all lands marked on the approved and certified list of January 13, 1854, as swamp and overflowed lands, and direct the issue of a patent or patents therefor, but it simply operated to accept the field notes finally approved as evidence of the lands passing under the grant, leaving to the land department to make any needed corrections in the surveys and field notes.

The decision in Martin v. Marks, 97 U. S. 345, does not conflict with this

construction of the act of 1857.

This was an action of ejectment commenced in the Circuit Court of the United States for the Eastern District of Michigan on February 11, 1888. On November 28, 1892, the case came on for trial before the court and a jury. At the close of the testimony the jury, under the instructions of the court, returned a verdict for the defendants. On May 7, 1895, this judgment was affirmed by the Court of Appeals, 31 U. S. App. 731, and to review such judgment the case was brought

Counsel for Plaintiff in Error.

here on writ of error. The land in dispute is situated in Clare County, being the S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of sec. 20; N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of sec. 21; N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of sec. 22; N. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of sec. 28; N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of sec. 29; N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of sec. 35, township 18, range 3 W.; and E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of sec. 1, township 18, range 4 W., and amounting to 400 acres, the undivided half of which only was claimed by plaintiff.

The contention of the plaintiff, generally speaking, is that this was swamp land, and granted to the State of Michigan by the act of Congress of date September 28, 1850, c. 84, 9 Stat. 519, granting swamp lands to the several States; that it was included in a list of such lands in the Ionia land district, approved by the Secretary of the Interior and forwarded to the governor of Michigan on January 13, 1854; that the act of March 3, 1857, c. 117, 11 Stat. 251, confirmed the action of the Secretary of the Interior, and thereby passed the title to the State of Michigan, by which State it was, on October 14, 1887, conveyed to plaintiff's grantor.

The defendants, on the other hand, contend that the original surveys of the public lands in the State of Michigan were erroneous; that, at the instance of the State, Congress ordered resurveys, which resurveys were carried on from the years 1842 to 1857; that, while it is true this land was by the original surveys classed as swamp land and included in the Ionia land district list approved and certified to the State of Michigan, the resurveys showed that it was not land of that description; that a new list for that district, not including this land, was in 1866 made out and certified to the State; that such new list was accepted by the State as correct, and a patent for the lands described therein issued to and received by it; that after all this had taken place and in 1870 the land in question was sold by the officers of the United States at auction after public advertisement and that patents were duly issued upon such sale, under which patents the defendants claim title.

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Opinion of the Court.

in error. Mr. J. W. Champlin and Mr. A. J. Britton were on their briefs.

Mr. Benton Hanchett and Mr. Ashley Pond for defendants in error.

Mr. Justice Brewer, after stating the case, delivered the opinion of the court.

This case involves questions of the power of the land department over the matter of the identification of the particular lands passing under the swamp land act of 1850, of the finality of the action of the Secretary of the Interior in approving and certifying to the Governor of the State a list of such lands, and of the effect of the confirmatory act of 1857. There is no testimony showing what was in fact the condition of the land, whether swamp or not, at the time of the passage of the act of 1850, and the case turns wholly upon the documentary evidence.

The act of 1850 made a grant in præsenti; in other words, the title then passed to all lands which at that date were swamp lands, and the only matters thereafter to be considered were those of identification. Railroad Company v. Smith, 9 Wall. 95; French v. Fyan, 93 U. S. 169; Martin v. Marks, 97 U. S. 345; Rice v. Sioux City & St. Paul Railroad, 110 U. S. 695; Wright v. Roseberry, 121 U. S. 488; Tubbs v. Wilhoit, 138 U. S. 134. But while the act operated as a grant in præsenti, the determination of what lands were swamp lands was entrusted to the Secretary of the Interior. Section 2 contains this provision:

"That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the governor of the State of Arkansas, and, at the request of said governor, cause a patent to be issued to the State therefor; and on that patent, the fee simple to said lands shall vest in said State of Arkansas, subject to the disposal of the legislature thereof."

It may be remarked in passing that while the first and second sections refer specifically to the State of Arkansas, section 4 of the act makes it applicable to all the States. It is true that in the first section Congress defines the lands granted as "swamp and overflowed lands, made unfit thereby for cultivation;" and section 3, referring to the lists and plats ordered by section 2 to be made out by the Secretary of the Interior, contains this further specification as to the character of the lands granted:

"That in making out a list and plats of the lands aforesaid, all legal subdivisions, the greater part of which is 'wet and unfit for cultivation,' shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom."

But while Congress thus defined what it intended to grant as swamp and overflowed lands it entrusted, as appears from section 2, the identification of those lands to the Secretary of the Interior.

It will be perceived that the act contemplated the issue of a patent as the means of transferring the legal title. In Rogers Locomotive Works v. American Emigrant Co., 164 U. S. 559, 574, it was said, speaking in reference to this matter, and after a full review of the previous authorities: "When he" (that is, the Secretary of the Interior) "made such identification, then, and not before, the State was entitled to a patent, and on such patent' the fee simple title vested in the State. The State's title was at the outset an inchoate one, and did not become perfect, as of the date of the act, until a patent was issued."

Generally speaking, while the legal title remains in the United States, the grant is in process of administration and the land is subject to the jurisdiction of the land department of the Government. It is true a patent is not always necessary for the transfer of the legal title. Sometimes an act of Congress will pass the fee. Strother v. Lucas, 12 Pet. 410, 454; Grignon's Lessee v. Astor, 2 How. 319; Chouteau v. Eckhart, 2 How. 344, 372; Glasgow v. Hortiz, 1 Black, 595; Langdeau v. Hanes, 21 Wall. 521; Ryan v. Carter, 93 U. S.

78. Sometimes a certification of a list of lands to the grantee is declared to be operative to transfer such title, Rev. Stat. § 2449; Frasher v. O'Connor, 115 U. S. 102; but wherever the granting act specifically provides for the issue of a patent, then the rule is that the legal title remains in the Government until the issue of the patent, Bagnell v. Broderick, 13 Pet. 436, 450; and while so remaining the grant is in process of administration, and the jurisdiction of the land department is not lost.

It is, of course, not pretended that when an equitable title has passed the land department has power to arbitrarily destroy that equitable title. It has jurisdiction, however, after proper notice to the party claiming such equitable title, and upon a hearing, to determine the question whether or not such title has passed. Cornelius v. Kessel, 128 U. S. 456; Orchard v. Alexander, 157 U.S. 372, 383; Parsons v. Venzke, 164 U. S. 89. In other words, the power of the department to inquire into the extent and validity of the rights claimed against the Government does not cease until the legal title has passed. "A warrant and survey authorize the proprietor of them to demand the legal title, but do not, in themselves, constitute a legal title. Until the consummation of the title by a grant, the person who acquires an equity holds a right subject to examination." Miller v. Kerr, 7 Wheat. 1, 6. After the issue of the patent the matter becomes subject to inquiry only in the courts and by judicial proceedings. United States v. Stone, 2 Wall, 525, 535; Moore v. Robbins, 96 U. S. 530; United States v. Schurz, 102 U. S. 378, 396; Bicknell v. Comstock, 113 U. S. 149, 151; Iron Silver Mining Co. v. Campbell, 135 U. S. 286; Williams v. United States, 138 U. S. 514. This jurisdiction of the department has been maintained in cases of preëmption where the entire purchase money has been paid and a receiver's final certificate issued. Orchard v. Alexander, 157 U. S. 372, and cases cited in the opinion; Parsons v. Venzke, 164 U. S. 89

In Knight v. United States Land Association, 142 U. S. 161, is a full discussion by Mr. Justice Lamar of the power of the Secretary of the Interior over proceedings in respect to the

disposition of public lands, and on page 178 it is said, as illustrative of the scope of that power: "For example, if, when a patent is about to issue, the Secretary should discover a fatal defect in the proceedings, or that by reason of some newly ascertained fact the patent, if issued, would have to be annulled, and that it would be his duty to ask the Attorney General to institute proceedings for its annulment, it would hardly be seriously contended that the Secretary might not interfere and prevent the execution of the patent. He could not be obliged to sit quietly and allow a proceeding to be consummated, which it would be immediately his duty to ask the Attorney General to take measures to annul." And, again, on page 181 is this language: "The Secretary is the guardian of the people of the United States over the public lands. The obligations of his oath of office oblige him to see that the law is carried out, and that none of the public domain is wasted or is disposed of to a party not entitled to it. He represents the Government, which is a party in interest in every case involving the surveying and disposal of the public lands." See also Orchard v. Alexander, 157 U. S. 372, 381, 382; Warner Valley Stock Company v. Smith, 165 U. S. 28, 34. This jurisdiction extends to the ordering of new surveys whenever in the judgment of the department there has been error or fraud in those already made. Cragin v. Powell, 128 U. S. 691. In Tubbs v. Wilhoit, 138 U. S. 134, 143, the court quoted with approval this passage from a letter of the Secretary of the Interior: "There can be no doubt but that under the act of July 4, 1836, reorganizing the general land office, the Commissioner has general supervision over all surveys, and that authority is exercised whenever error or fraud is alleged on the part of the surveyor general." And in New Orleans v. Paine, 147 U. S. 261, the question was presented as to the power of the department to order a new survey, and on page 266 the rule was thus stated: "If the department was not satisfied with this survey, there was no rule of law standing in the way of its ordering another. Until the matter is closed by final action, the proceedings of an officer of a department are as much open to review or reversal by himself,

or his successor, as are the interlocutory decrees of a court open to review upon the final hearing." So, notwithstanding that a survey had been made and that such survey indicated that the land in controversy was swamp land, and, therefore, passing under the act of 1850 to the State of Michigan, it was within the power of the land department, at any time prior to the issue of a patent, of its own motion, to order a resurvey, and correct by that any mistakes in the prior survey.

But in this case it is not necessary to rely alone on the general power vested in the land department, for as early as 1842 the attention of the legislature of Michigan was called to the fact that there had been errors in the surveys of public lands within the State, and a resolution was passed by it in these words:

"Whereas, it has been satisfactorily made to appear to this legislature that large districts of lands lying within the limits of the State of Michigan have been returned by some of the deputy United States surveyors to the general land office as surveyed, where no surveys whatever have been made, or where the surveys have been so imperfectly done as to be utterly valueless; and whereas, the United States surveyor general of this land district has caused the lands so represented as surveyed to be offered for sale, to the very great injury of the State of Michigan and the citizens thereof; therefore,

"Be it resolved by the Senate and House of Representatives of the State of Michigan, That the President of the United States be requested to cause the subdivisions of the following townships of land, situate within the State of Michigan, and which have been represented to have been surveyed, but which have either not been surveyed or have been so imperfectly surveyed that said work is valueless, to be surveyed at as early a day as may be consistent, viz.:

"Resolved, That the governor be requested to transmit the foregoing preamble and resolution to the President of the United States." Laws Mich. 1842, No. 8.

A letter, enclosing a copy of this resolution, was forwarded to the Commissioner of the General Land Office, and by him

referred to the President, who endorsed it as follows: "Let the matter be referred to the surveyor general, with instructions as indicated, and let the Governor of Michigan be informed of the measures to be adopted." Thereupon proceedings for new surveys were taken by the land department. of which fact the Governor of the State was duly informed. It is true that in the resolutions of the Michigan legislature 81 townships were specifically named, and that the land in controversy was not included within those townships, but it appears that on the strength of the information thus furnished the land department proceeded to make new surveys of other lands than those specifically mentioned by the legislature, and the attention of Congress having been called to the matter, it from 1845 to 1856 inclusive made appropriations for correcting surveys in the State of Michigan. Act of March 3, 1845, c. 71, 5 Stat. 752, 762; Act of August 10, 1846, c. 175, 9 Stat. 85, 95; Act of March 3, 1849, c. 100, 9 Stat. 354, 365; Act of September 30, 1850, c. 90, 9 Stat. 523, 530; Act of March 3, 1851, c. 32, 9 Stat. 598, 611, 612; Act of March 3, 1853, c. 97, 10 Stat. 189, 204; Act of August 4, 1854, c. 242, 10 Stat. 546, 565; Act of March 3, 1855, c. 175, 10 Stat. 643, 660; Act of August 18, 1856, c. 129, 11 Stat. 81, 86. The last three appropriations were made after the sending of the approved list for the Ionia land district to the Governor on January 13, 1854.

It may be noticed here, in passing, that in the adjustment of the swamp land grant for the State of Michigan the land department did not include in one list all the swamp lands within the State, but made out several lists, apparently one at least for each land district.

Not only was there general knowledge on the part of the authorities of the State, as of these at Washington, of the existence of errors and mistakes in the original surveys of public lands in the State of Michigan, but also was there particular information as to supposed errors in the surveys of the land in controversy. After the passage of the act of 1850 the Commissioner of the general land office instructed the surveyor general of the State of Michigan to examine the

field notes of the surveys on file in his office and report therefrom a list of the lands which were swamp or overflowed. From time to time the surveyor general forwarded to the land department lists in accordance with these instructions. March 29, 1852, he forwarded a list containing the land in question, and in the letter accompanying is found this language: "The districts reported by Judge Burt and Hiram Burnham to be fraudulent are embraced in this list and marked 'F'," and in that list the district containing the land in controversy is marked with the letter "F," so that upon the records of the general land office was to be found information that the survey of this particular land was reported to be erroneous, and as such was likely to be included in resurveys then pending. The report of the commissioner of the state land office to the legislature of the State, for the year ending November 30, 1856, contains this statement: "Patents are now received for all these lands in the State except those situate in the Ionia land district, comprising about 1,200,000 acres, and for these we are assured the patents will soon be forwarded, the making of which have been delayed in consequence of extensive resurveys by the General Government, which, in some instances, changes the amount and character of the land." And again, after speaking of the application for the purchase of particular tracts, he says they have been denied, because "no valid sale could be made until after a compliance with the law requiring advertisement of a public offering to be published in each county of the State; and such public sale or offering has not been deemed advisable until after the title of the State to the grant should be wholly confirmed by the issue of the patents, and the numerous corrections and restatements of the lists necessary to be previously made by the department at Washington." And still again: "It is well known that many tracts, and sometimes almost entire sections, are now considered as among the best of farming lands, or extensively covered with pine and other valuable timber."

Upon the resurveys the land in controversy was shown not to be swamp and overflowed land, and lists conforming to these new surveys were duly approved and certified by the

Secretary of the Interior and forwarded to the Governor of the State of Michigan; the receipt of such lists was acknowledged and a request made for patents for the lands described therein, and patents were issued and accepted conveying such lands.

These facts indicate very clearly an adjustment of the grant upon the basis of the resurveys. Undoubtedly the beneficiary of such a grant is interested in its adjustment and may properly be heard before the officers of the grantor in determining what lands are embraced within it, and any assent by the grantee to a determination made by the officers of the grantor as to the lands passing within the grant would be binding upon it. In this case the grant was for the benefit of the State of Michigan, but in the act of 1850 making the grant, Congress, as it had a right to do, clearly indicated the officer of the State, to wit, the Governor, whose action in the premises should be the action of the grantee. Under these circumstances, it being known that there were errors in the surveys, and the legislature of the State having requested action to be taken to correct these errors, and resurveys having been undertaken, and while they were being prosecuted for the purpose of correcting such errors, a list of lands, which by the original surveys appeared to be swamp and overflowed, was made out and forwarded to the Governor. Upon the records of the land department the original survey of the district containing the land in controversy was at that time challenged as fraudulent. After the list containing this land had been forwarded to the Governor and his request for a patent returned to the land department, a patent was issued not including this land. Subsequently the resurveys were finished and according to them this land was excluded from the grant. Thereupon a new and corrected list containing the lands, which by the resurveys were shown to be swamp and overflowed, was made out, approved by the Secretary of the Interior and forwarded to the Governor. Upon its receipt the Governor requested patents to be issued, and patents were issued conveying the lands specified therein. This clearly shows an acceptance by the officer of the State, charged under the act of Congress with the duty of so doing, of the resurveys as within the

authority of the land department, and makes the adjustment of the grant upon the basis of such resurveys final and conclusive. The act of the State in accepting the new and corrected survey as the basis of adjustment is tantamount to a waiver of any claims under the prior and erroneous survey, for it cannot be that a grantee accepting a patent for lands which according to a final and correct survey are shown to be within the terms of the grant can thereafter be heard to say, Notwithstanding I have taken all the lands shown to belong to me by this correct survey, I also claim lands which by a prior and erroneous, if not fraudulent survey, appeared to pass under the grant. He cannot in that way enlarge the scope of the grant, and after taking lands which are finally determined to pass under the grant say, I also insist upon lands which upon such final survey are shown not to be within the grant, simply because under a prior erroneous survey they appeared to be within its terms.

We come now to consider the effect of the act of March 3,

1857, c. 117, 11 Stat. 251, which provided:

"That the selection of swamp and overflowed lands granted to the several States by the act of Congress . . . heretofore made and reported to the commissioner of the general land office, so far as the same shall remain vacant and unappropriated, and not interfered with by an actual settlement under any existing law of the United States, be and the same are hereby confirmed, and shall be approved and patented to the said several States, in conformity with the provisions of the act aforesaid, as soon as may be practicable after the passage of this law: Provided, however, That nothing in this act contained shall interfere with the provisions of the act of Congress entitled 'An act for the relief of purchasers and locators of swamp and overflowed lands,' approved March the second, eighteen hundred and fifty-five, which shall be and is hereby continued in force, and extended to all entries and locations of lands claimed as swamp lands made since its passage."

It is contended by the plaintiff that the purpose and effect of this act were to confirm to the State of Michigan the title to all lands marked on the approved and certified list of Jan-

uary 13, 1854, as swamp and overflowed lands, and to direct the issue of a patent or patents therefor. Whatever question might have existed, were it not for this act, as to whether any of the lands marked on such lists were swamp and overflowed lands, and whatever authority there might otherwise be in the land department to make corrections, Congress, which had full power over the matter, by it in terms granted to the State these lands; such action by Congress was a finality; thereafter no inquiry could be made as to the character of the lands; no correction of the list; and the full equitable title passed to the State, beyond the possibility of challenge. It is insisted that Congress must have known of the alleged irregularities in the surveys; known of the approval by the Secretary of the Interior of this list; that it had been forwarded to the Governor; that the Governor had accepted and requested the issue of patents; and with this knowledge passed this act, intending thereby to remove all question as to the character of the lands, to put an end to the necessity for any further examination, and to make this list the single and absolute evidence of the lands it was granting to the State of Michigan. There would be force in this contention if the act of 1850 contained simply a grant to the State of Michigan, and there were but a single list of swamp lands in that State. It might then well be said that this act was passed with reference solely to the conditions existing in respect to this attempted selection of swamp and overflowed lands in that State, but the act of 1850 was a grant to all the States, and the act of 1857 must, therefore, be construed as applicable to the conditions existing in all of the States. It is contended by the defendants that it applies only to those States in which the state authorities had attempted to make selections of swamp and overflowed lands within their limits, and had communicated such selections to the land department, and that its purpose was simply to confirm to the States lists which constituted selections made by them, and with reference to which the Secretary of the Interior had delayed and neglected to act; and they refer to the opinion of this court in Tubbs v. Wilhoit, 138 U. S. 134, 137, in which it is said:

"In consequence of the delays in certifying the lists and the inconveniences which followed, the legislatures of several States, in which such lands existed, undertook to identify the lands and dispose of them, and for that purpose passed various acts for their survey and sale and the issue of patents to purchasers. The conflicts which thus arose between parties claiming under the State and parties claiming directly from the United States led to various acts of Congress for the relief of purchasers and locators of swamp and overflowed lands. Act of March 2, 1855, 10 Stat. 634, c. 147; act of March 3, 1857, 11 Stat. 251, c. 117."

This argument is entitled to consideration because the word "selection" applies more naturally to the action of the grantee in reporting to the land department the lands which it claims, than to the action of the land officers in identifying from the field notes what are and what are not swamp and overflowed lands. The term "selection" is not an apt word to describe the identification of certain lands according to evidence presented of their character. But we need not rest on this. Conceding that the statute applies not merely to those cases in which affirmative action had been taken by the States, but also to those in which without any such action the only proceedings had been those in the land department of the United States, still we think that it cannot be held that this act is to be construed as expressing a purpose to make the list in this case, approved and certified to the State, a finality as to the lands passing under the grant and an absolute transfer of the equitable title.

In order to fully understand the matter attention must be called to the act of 1850. That granted, as has been seen, swamp and overflowed lands, and directed the Secretary of the Interior, as soon as practicable, to make an accurate list and plats of such lands and transmit the same to the Governor, and thereafter, at his request, cause a patent to be issued. The manner in which the Secretary should discharge this duty, the evidence that should be required by him as to the character of the lands, were not prescribed by the act; the matter was left to his discretion. The Secretary sent out

instructions to the surveyor general of the State of Michigan to make lists of the unsold swamp lands, as shown by the field notes on file in his office. From these instructions we quote this passage: "The only reliable data in your possession, from which these lists can be made out, are the field notes of the surveys on file in your office, and if the authorities of the State are willing to adopt these as the basis of those lists, you will so regard them; if not, and those authorities furnish you satisfactory evidence that any lands are of the character embraced by the grant, you will so report them." On receipt of a letter containing notice of this from the surveyor general the Governor replied that he did not have authority to incur any expense in the matter, and afterwards referred it by message to the legislature, which body, by act passed June 28, 1851, Laws of Michigan, 1851, p. 322, adopted the surveys on file in the surveyor general's office as the basis of adjustment. The effect of this legislative action was not to make an erroneous survey conclusive nor to preclude the land department from the exercise of its unquestioned jurisdiction to correct surveys, but simply to accept the field notes finally approved as the evidence of the lands passing under the grant, leaving to the land department to make any needed corrections in the surveys and field notes. other States different action was taken by the state authorities, as appears from the opinion of this court in Tubbs v. Wilhoit, supra. Now, the obvious purpose of this act of 1857 was to ratify and confirm the various steps taken by the Secretary of the Interior in the selection of swamp and overflowed lands. It was general in its terms, reaching to all the States, and the different modes by which identification of the swamp and overflowed lands had been attempted to be accomplished. It cannot fairly be construed as intending to put an end to all further inquiry in the land department, nor to oust that department of jurisdiction to inquire into and correct any frauds or mistakes, but was a general ratification and confirmation of the methods pursued. It cannot be supposed that Congress intended by this act to condone all frauds, to prevent the correction of errors or mistakes, to take everything as it then appeared on the records of the land department, and, forbidding any further inquiry, declare that lands which by such records, through error or fraud, appeared to be swamp and overflowed, should be granted to the State. It was not an act to enlarge the grant of 1850. It was not an act to oust the land department of its ordinary jurisdiction to inquire into and ascertain what were swamp and overflowed lands, but was an act confirming and ratifying the methods thus far pursued. Congress must have been aware of the fact that there were charges of fraud or mistake in reference to the surveys in the State of Michigan. It had appropriated large sums for resurveys. They had partially been made, and mistakes, if not frauds, had been found. It does not appear that such charges existed in reference to the surveys in other States; at any rate, it is not to be presumed that all surveys in all the States were fraudulent or erroneous, and it would require very clear and direct language before the intent could be imputed to Congress to ignore the existence of alleged frauds and errors in the one State and to confirm titles to lands in that State based upon such fraudulent or erroneous surveys, and thereby enlarge, perhaps very materially, the amount of the grant to such State. The language of the act does not compel any such conclusion as to the intent of Congress.

The decision in Martin v. Marks, 97 U. S. 345, does not conflict with this construction of the act of 1857. It is true this language is found in the opinion: "After the passage of that act the land department had no right to set aside the selections." But in that case there was no question of the power of the land department to correct errors or mistakes. The plaintiff relied on a list made by the surveyor general of Louisiana of swamp and overflowed lands, which list, containing the land in dispute, had been forwarded to the general land office, and there filed. It did not appear that this list had been formally approved by the Secretary of the Interior, as contemplated by the act of 1850. The defendant relied on a patent from the United States, issued long thereafter. It was held that the act of 1857 dispensed with the formal approval by the Secretary of the Interior, and confirmed the lists made

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and filed with the commissioner of the general land office. And in view of that fact, and as no question had been made in the land department of the correctness of the survey, it was adjudged that the equitable title of the State to the land was perfect. So, in this case, if there had been no challenge of the original surveys, no attempt at a resurvey or to correct errors or mistakes, and there had been simply a lack of the formal approval of the list by the Secretary of the Interior, that case would have compelled an adjudication that the full equitable title had passed to the State of Michigan, and would have invalidated the patent subsequently issued by the United States directly to the parties under whom the defendants claim. But that is far from deciding that all power in the land department to inquire into frauds or errors in the surveys was taken away and all frauds upon the Government in such surveys condoned. It was merely a decision that as the identification by the surveyor general of the land as swamp land had not been challenged for fraud or mistake, it was binding on the question of title, and the approval by the Secretary of the Interior and the issue of the patent were simply ministerial acts. See also Blanc v. Lafayette, 11 How. 104.

We see no error in the judgment of the Court of Appeals, and it is, therefore,

Affirmed.